

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

Quick Serve,

Appellant,

v.

**Office of Retailer Operations
and Compliance,**

Respondent.

Case Number: C0219274

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 Quick Serve (Appellant), by the Office of Retailer Operations and Compliance (Retailer Operations).

ISSUE

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

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, provide that a food retailer aggrieved by administrative action under § 278.1, § 278.6, or § 278.7, may file a written request for review of the administrative action with the Food and Nutrition Service.

CASE CHRONOLOGY

By Charge letter dated August 15, 2019, Retailer Operations informed the owner that it had compiled evidence that Appellant had violated the SNAP regulations based on electronic benefit transfer (EBT) transactions that established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for the firm type. The sanction for trafficking is permanent disqualification. The owner, responded to the Charge letter by letter received September 5, 2019.

He provided copies of 49 transaction tapes/receipts including: two sets of three identical tapes, seven sets of duplicate tapes, and 29 individual transaction tapes.

Retailer Operations issued a Determination letter dated September 13, 2019, that informed the owner that Appellant was permanently disqualified in accordance with Sections 278.6(c), and 278.6(e)(1) of the SNAP regulations. Retailer Operations considered Appellant's eligibility for a civil money penalty (CMP) according to Section 278.6(i) of the regulations, and found it was not eligible because insufficient evidence was submitted to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated September 20, 2019, counsel appealed Retailer Operations' determination, and requested administrative review. The appeal was granted by letter dated October 21, 2019. Counsel made a FOIA request November 1, 2019. Counsel agreed to the FOIA fees by letter dated November 21, 2019. The FOIA office provided a FOIA reply by letter and information dated December 4, 2019. Counsel provided his brief by email on December 20, 2019. Retailer Operations provided this office with its assessment of the brief on January 24, 2020.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

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

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: "Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption."

7 CFR § 278.6(a) states: "FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts

established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(b)(2)(ii) states: “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 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).”

7 CFR § 278.6(i) states: “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.”

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges were based on an analysis of SNAP transaction data during the period of January 2019 through June 2019. The patterns of transaction characteristics indicative of trafficking are:

- Multiple transactions were made from individual benefit accounts within a set time period.
- Large transactions based on the observed store characteristics and recorded food stock.

APPELLANT’S CONTENTIONS

In reaching a decision, consideration has been given to all contentions, including any not referenced herein.

- The Store is the only retail store in the surrounding area that provides an expansive and diverse selection of grocery products. Appellants’ inventory is supported by the Store’s submitted vendor invoices and photographs.
- Some of the SNAP customers’ spending habits became erratic during the government shutdown, beginning December 22, 2018 and ending January 25, 2019. To avoid SNAP benefit cuts, States issued February benefits early which resulted in a new issue entirely, a lengthy delay between February benefits, which most beneficiaries received by January 20 and March benefits. This budgeting pattern is reflected in the Store’s SNAP transactions, which shows a significantly large increase conducted in January 2019, when recipients received double benefits and significantly decreased in February 2019.
- SNAP participants buy sweetened beverages, frozen prepared foods and prepared desserts at a much higher rate than traditional consumers. These purchasing habits, set against the inventory, shows that the Store stocks the majority of a SNAP household’s preferred needs, and has sufficient variety and quantity to meet the needs of several households all at once without having to replenish inventory.

- The vendor receipts show that there is far more 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of inventory on the shelves at the Store. With the varieties and quantities supported by the documentary evidence, FNS cannot make a straight-faced argument that the transactions are impossible for want of items to sell. It becomes an issue of whether or not the transactions found in the data could be supported by the Store’s substantial traditional inventory, which it clearly can.
- Appellants have submitted: vendor inventory receipts, Monthly Sales Tax Reports; Itemized Monthly Inventory Reports; the Store’s EBT register receipts; photographs; and SNAP recipient affidavits. These documents substantiate the Appellants’ claim that the inventory more than satisfied the SNAP transactions in the Charge Letter and make it more likely than not that food was being sold in the Store.
- In Alabama, SNAP benefits are issued between the 2nd through the 20th day of each month based on the last two digits of the participant’s case number. A substantial portion of the “large transactions” occurred during said time frame.
- It is unclear which stores, if any, were used as proper comparison stores and what was also offered therein. Thus, with nothing set forth to the contrary, the only reasonable conclusion is that the Store’s transactions were in line with transactions at the comparison stores.
- The statute does not authorize the Department to rely upon a system that inaccurately accounts for what is “consistent” or “inconsistent.”
- The effective compliance policy and program at the Store is reflected by the Store’s significant compliance history since it became an authorized SNAP retailer and the prior negative RIB Investigations conducted in 2018.

Counsel provided: a ten page report “Many SNAP Households Will Experience Long Gap Between Monthly Benefits Despite End of Shutdown;” six pages of copies of Appellant’s 2019 monthly sales tax report for January, March, April, May, and June; four pages of 2019 store inventory for January, March, May, and June; an article entitled “U.S. Grocery Shopping Trends, 2016;” an article entitled “Know Your Core, Protect Your Core;” 106 register tapes/receipts; ten customer affidavits; 14 pages of store inventory photographs, and 336 pages of inventory invoices.

ANALYSIS AND FINDINGS

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

Attachment 1: Listed are 44 transactions in 18 sets conducted by six unique households (HHs). The store is typed as a convenience store.

Contentions:

- The Appellants developed many techniques to attract customers to increase spending, including providing a substantial variety of groceries, food specials/bundles, options for hot

food, and gas pumps. It is common for customers to visit multiple times per day to use the variety of services provided wherein they will generally make a food purchase.

- Some of the more popular price incentives and/or specials/bulk items sold are: 5 frozen foods for \$19.99; bags of chips, 50 count for \$17.99; 2 frozen pizzas for \$10.00; and 2 chicken pot pies for \$5.00.
- The Store provides gas pumps, which increases the foot traffic and customers will enter and purchase additional grocery products.
- During the Review Period, the Store had two registers, two POS devices, an optical scanner, and a minimum of two employees working at any given time. The Store utilizes an optical scanner which permits the cashier to process the transactions quickly and efficiently. The goal of Store personnel is to expedite each transaction, as the customers appreciate that they can conduct their shopping quickly.
- The Store provides shopping baskets and carts, which permits shoppers to gather a substantial amount of food and transport it to the register without logistical difficulty.
- On a regular basis, the participants will make significant grocery purchases **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of receiving the deposit into their accounts, as reflected in the majority of the transactions set forth in Attachment 1.
- In light of the location of the Store, the lack of any nearby larger authorized SNAP stores, the lack of personal transportation for the majority of SNAP participants, and the large variety of food items sold, including many specials/bundles, it is understandable that SNAP customers would routinely shop at the Store during a short period of time.
- The innocent transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, are easily explained by (1) the participant forgetting an item in his/her prior transaction; (2) co-shopping; (3) the participant making a purchase, returning home, and then returning to the Store to make a second purchase; and/or (4) the logistics of the Store.

The record shows that there are 40 SNAP-authorized stores within three miles of Appellant including: five super stores, three supermarkets, one medium grocery store, one small grocery store, 21 convenience stores, and nine combination/other grocery stores. The nearest store to Appellant is a medium grocery that as seen in the record, offers a wider variety of staple foods than Appellant.

Retailer Operations found that the SNAP total dollar volume at Appellant was 95% higher than the Montgomery County SNAP average dollar volume for the same type store. Appellant's average SNAP transaction amount was 20% higher than County convenience stores for the same period. The data shows that 83% of the households listed on this Attachment conducted transaction(s) at a super store or supermarket within one day of making a transaction at Appellant. Thus, recipients did have access to, and did conduct SNAP transactions at larger authorized retailers. Four convenience stores within a one mile radius of Appellant each had zero transaction sets flagged on this scan. Retailer Operations determined that Appellant's SNAP activity was unusual and irregular. It determined that the six HHs flagged on this Attachment did not complete transactions that met the parameters of this Attachment, at any other firm during the review period.

The record shows that several households with given residential addresses more than seven miles from Appellant, made much larger SNAP transactions there than at super stores where they

conducted transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For example, the HH made transaction number 49 for hundreds of dollars at Appellant, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a super store. Transaction number 81 was conducted at Appellant for in excess of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and later that same date the HH transacted less than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a super store. This is unusual.

Much of the stock seen in the FNS photos taken during the onsite visit on April 4, 2019, appears to be snacks, beverages, canned and frozen foods. The FNS-contractor noted no fresh meat or poultry, limited fresh fruits, only onions were seen as a fresh vegetable, and no specialty/ethnic items were noted in inventory. There is a photo of a frozen meat special of two southern meats for \$8.00, and frozen hot wings, pizza and hot dogs. Large packs of sodas are also seen in the FNS and owner's photos. The FNS-contractor indicated that Appellant offered some bundles however, there was no indication of any bundle 5 for \$19.99 Pick 5, or Digiorno Frozen Pizza 2 for \$10.00. Retailer Operations noted that the owner, in his initial reply to the Charge letter, never indicated any such deals such as Pick 5 for \$19.99.

Retailer Operations reviewed all the FNS store photos and those provided by counsel. The red arrow directing to \$3.59 sign indicates that the freezers are the same in both sets of photos. The circled signage appears to have been added after the Charge letter. Clearly, the signs were not posted at the time of the FNS visit.

FNS Photos



Counsel's Submission





The FNS store visit report had no indication of Pick 5 for \$19.99, even though all the high priced items and stocking units were listed in consultation with the owner. These were: frozen pizza \$8.99, 10+ units; frozen hot chicken wings \$7.99/5 lb. bag, 5 units; frozen chicken \$16.99/56 oz. bag, 2 units; and boiled peanuts \$8.99/6 lb. can, 10+ units.

Retailer Operations found that the new photos did not differ greatly from those taken by the FNS contractor, other than that the food items were more organized, and there many more price stickers/signage posted throughout the store. These various bundle prices were not posted at the time of the FNS inventory. None of the 45 FNS photos evidence that the store sold chicken wings for \$27.99, hot dogs and sausage at \$8.99 each, red bull/monster energy drink for \$59.99/case as claimed by counsel. Retailer Operations could validate the contention that the contractor missed some high priced items. Nevertheless, counsel did not provide photos of those prices and items. As noted, the high priced items on the inventory report were listed in consultation with the owner.

The owner's reauthorization application of 2015 shows that he estimated that 58% of his total sales were for non-eligible items including gasoline, tobacco products, alcohol, and hot foods. Hot food is not allowed for purchase with SNAP benefits. There is a large menu seen promoting pizza at Appellant. Other ineligible items seen include: dog food, paper products, health and beauty items, and cleaning supplies. The owner's reauthorization application shows that he estimated 22% of his sales in staple foods, and 20% of sales in accessory foods. According to a government report on SNAP recipients, "Households most often redeemed their benefits at supermarkets and supercenters. Purchases at supermarkets and supercenters accounted for nearly two-thirds of all transactions and more than 80% of all benefits redeemed." Retailer Operations did not accept "core" shopping as a reasonable explanation for the majority of the transactions listed in the Charge letter.

Retailer Operations did not accept that large transactions, such as those seen in data sets: 9/10, 13-16, 17-19, 22/23, 26-28, 29-31 and 40-42, on dates not proximate to the government shutdown, were the result of purchases of a secondary item after completing an initial SNAP transaction, due to an incidental or forgotten items. The transaction amounts such as #18 for almost 5 U.S.C. § 552 (b)(6) & (b)(7)(C), 5 U.S.C. § 552 (b)(6) & (b)(7)(C) after a transaction of

more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C), were not indicative of forgotten or afterthought purchases.

The record supports that there was a checkout area with two cash registers, point-of-sale devices, and optical scanning. Contrary to counsel's contention, the store visit report notes that there were no shopping carts or hand baskets for recipient use to transport food items that would total to the high dollar transaction amounts listed on the Attachments. No evidence to support the presence of carts and shopping baskets was advanced. Retailer Operations noted that most of the cash register tabs showed large numbers of items purchased. For example, a receipt on 3/6/19 included 30 items, and one dated 6/10/19 showed 33 items. Without shopping baskets or carts, and the limited counter space at the checkout, the logistics of processing these transactions is questionable.

Counsel provided ten signed recipient formatted affidavits in support of shopping behaviors at Appellant. Retailer Operations assessed these.

- Recipient 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to have spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in a purchase, and 65% of her monthly benefits at Appellant. The record shows that this individual did not have a single transaction for more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant during the review period. The HH's SNAP monthly transaction totals at the store averaged 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The affiant's claims are not supported by the actual shopping data.
- Recipient 5 U.S.C. § 552 (b)(6) & (b)(7)(C) provided an affidavit with a residence address that could not be matched in the state terminal. There were at least four SNAP recipients with the same name, none of whom had the address stated. Retailer Operations could not validate the affiant's statement.
- Recipient 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did transact high dollar SNAP amounts at Appellant. After the date of the Charge letter, the the transaction history for this recipient appears to have changed. The individual shifted her shopping patterns from Appellant to supermarkets and super stores and conducted only one transaction with Appellant from August 17, 2019 through September 16, 2019, when Appellant was disqualified. This led Retailer Operations to suspect that the individual was trafficking at Appellant.
- Household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and 65% of her monthly benefits at Appellant. The data confirms that the HH spent a small percentage of SNAP benefits at Appellant, not the 65% claimed. The HH's shopping history at Appellant shows that the largest SNAP transaction was 5 U.S.C. § 552 (b)(6) & (b)(7)(C) followed by one for 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C) has a different address in the state record; however, there was only one person with this name. He stated that he spends 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 30% of his benefit at Appellant. The shopping history data shows he only made two transactions of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant, and these were his largest transaction amounts there. His monthly transaction total at this store did not approach 30% of his monthly benefits.
- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C) did not conduct any SNAP transactions at Appellant for the review months. He was matched to a slightly different address number.

- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and 60% of her benefits at Appellant. The transaction history shows that she made only one transaction at Appellant in May that was for more than 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and 45% of its monthly benefit at the store. While the HH made many transactions at Appellant, some on the same dates, they were for small amounts. The largest dollar amount was 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in June. The data did not support that 45% of the HH's total benefits were transacted at Appellant.
- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and 70% of its benefits at this store. The affiant claimed to have no transportation that caused her to shop at this store. This recipient was found to have frequently transacted benefits at a supermarket and various superstores on the same dates as transactions made at Appellant. She transacted cumulatively more than 70% of her benefits at larger store types.
- HH 5 U.S.C. § 552 (b)(6) & (b)(7)(C) claimed to spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with 50% of her monthly benefits at this store. None of her individual transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the highest amount being 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Her cumulative totals of monthly transactions with the store did not approach 50% of her benefits amount.

Retailer Operations determined that the recipient statements did not provide an accurate representation of the SNAP transaction history of each household. Thus, the statements were not persuasive as to Appellant's contentions.

Attachment 2: Listed are 101 transactions conducted by 29 unique HHs for amounts that exceed the average transaction amount for the same store type in the same state by three times or more. The data shows that 79% of the households flagged conducted a transaction(s) at a supermarket, or super store within one day of making a transaction(s) at Appellant. Appellant had many more flags on this Attachment as compared to four same type convenience stores within a one mile radius which had 6, 3, 17 and 8 flags respectively.

Contentions:

- The Inspector failed to report the following expensive items sold, despite capturing them in the photographs: chicken wings, \$27.99, hot dogs and sausage, \$8.99 each, red bull and monster energy case, \$59.99.
- The Inspector's notes show the Store to be sufficiently provisioned to satisfy the purchase amounts listed in the Charge Letter.
- The Store's monthly invoices are broken down to show the amount of food inventory stocked. The Store clearly had more than enough inventory for the amount of transactions conducted with SNAP during the review period. The Store had approximately an additional amount of inventory each month ranging 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- In support of the innocence of the SNAP transactions conducted are the Monthly Sales Tax Reports; Itemized Monthly Inventory Reports; and the EBT register receipts.
- The Store has many expensive popular items, not limited to, chicken wings, \$27.99, hot dogs and sausage, \$8.99 each, red bull case and monster energy case, \$59.99. These larger specials/bundles easily explain the "large" transactions.

- It is common for customers to spend larger amounts as a result of the lack of nearby alternative SNAP retailers due to the remote location of the Store and the lack of personal transportation for many of the SNAP clientele.
- A reasonable explanation for the higher transactions is that the households have a larger amount of SNAP residents residing therein, requiring a larger quantity of grocery products each month.
- The innocence of these transactions is further supported by the Affidavits executed by some of the Store's SNAP clientele, wherein 10 of said customers stated that they spend 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Store in a single trip.
- The government shutdown greatly affected the shopping behavior of SNAP recipients, as they were fearful that their SNAP benefits would cease to exist and/or were unable to properly budget their advancement of SNAP benefits. As a result recipients purchased larger amounts of groceries than they perhaps normally would.

The record supports that this is a gas station convenience store that offered a selection of snacks and beverages, and variety of canned, packaged, and frozen foods. Retailer Operations found it more likely than not that the large dollar transactions were indicative of trafficking. Counsel provided a total of 336 pages of invoices to support inventory. Retailer Operations found that the copies of some of these invoices were not readable. In an effort to validate the invoices Retailer Operations contacted a supplier 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and spoke with a named self-identified manager. He validated the dates, invoice numbers, and amounts of a few of the invoices. He indicated that Appellant had frequent deliveries because it has a hot food stand and a pizza oven. According to the contact, because Appellant is a gas station convenience store, its hot food items and pizzas are sold more than anything else in the store, and the store needed to replenish supplies every week or every other week. Seemingly, Appellant sells a good quantity of hot food items, and hot foods are not allowed for purchase in exchange for SNAP benefits.

Based on the invoices, Retailer Operations computed the total food items purchased, and determined the invoices did not support that Appellant acquired substantial staple foods. Nevertheless, the store acquired sufficient food inventory to cover its SNAP redemptions for the review period. However, given the totality of the evidence it considered, the invoice evidence did not persuade Retailer Operations that Appellant was not trafficking. Retailer Operations noted that the actual items purchased by SNAP recipients was unknown. The cash tape receipts advanced to support legitimate transactions, were not sufficiently detailed to account for items allegedly acquired.

Retailer Operations reviewed the 106 tape receipts; one had no date, one was dated outside of the review period, and one was not legible and these were excluded. A tape for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on 5/20/2019 is not listed on the Charge letter, and is not found in the SNAP data. Although there was no record of a SNAP transaction recorded at Appellant for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on 05/20/2019, this receipt matched one of the 49 receipts initially provided by the owner. This exact amount was listed for transaction number 59 on Attachment 2, but on a date in June.

5 U.S.C. § 552 (b)(7)(E)

5 U.S.C. § 552 (b)(7)(E)

Counsel’s submission

Owner’s Initial Submission

There was a tape for 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and there was a single SNAP transaction for that amount during the review period. Counsel provided two different receipts with this dollar amount. The last three items on both receipts are clearly different. As such, Retailer Operations considered that the variance depicts evidence of fabrication whereby the owner attempted to validate the transaction dollar amounts listed in the Attachments.

5 U.S.C. § 552 (b)(7)(E)

Retailer Operations also noted that there was only one transaction on the Charge letter for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on 01/08/2019. Counsel provided five receipts showing this same transaction dollar amount, four of which were the same, but one receipt with the same total dollar amount, and no date, listed different items. Retailer Operations determined that the no date receipt matched a receipt provided by the owner with his initial reply. This receipt does show the transaction date of 01/08/2019, and has the same items as the no date receipt as best can be seen. Since there was only one SNAP transaction for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) on that date, Retailer Operations determined that both of these receipts could not be valid, and that one or both may have been manufactured. Retailer Operations determined the tapes were evidence of likely forged documents to support false claims by Appellant.

No Date	1 for 4 Same Submissions	Initial submission by owner
5 U.S.C. § 552 (b)(7)(E)	5 U.S.C. § 552 (b)(7)(E)	5 U.S.C. § 552 (b)(7)(E)

Retailer Operations found that none of the cash tapes had a single transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C), prices claimed by counsel to be for bulk chicken and red bull/monster drinks. Retailer Operations observed that many of the receipts had the high dollar amounts at the top of the tab with smaller amounts down the list. It found this indicative of an attempt to match the tapes with the total transaction amounts on the Charge letter. These receipts were not itemized other than to note “Groceries F11” and “Soft Drink F11.” Therefore, there was nothing to document what if any groceries were sold to SNAP recipients other than possibly soft drinks. Retailer Operations found the tapes were not convincing as evidence of legitimate SNAP transactions.

The data supports that there are authorized stores near Appellant that had comparable or better staple food stock, and that households listed on the Attachments did utilize these other retailers. Retailer Operations conducted a review of several HHs’ shopping patterns at Appellant. These show that HHs made lower dollar SNAP transactions at supermarkets and super stores on dates proximate to, or on the same date as conducting transactions at Appellant. This is suspicious, particularly as Appellant carried limited staple foods.

With regard to the Monthly Sales Tax Reports provided for five out of the six month review period, Retailer Operations found that these reports did not have any resemblance of actual tax documents. These reports were not prepared on a typical state tax form. They do not contain any tax form reference number, or have any indication of any tax ID. No documentation was provided to support that these sales taxes were filed with Alabama Department of Revenue. At

the top of each record, the printed year 2014 was over-written by hand to reflect 2019. These reports also raised the question of authenticity because they were not prepared on any professional correspondence documents, they do not show a business address, nor do they have any contact telephone number for the professional service. Retailer Operations determined that the reports were likely not valid, and that they did not more support that Appellant was conducting legitimate transactions rather than trafficking.

Appellant advanced four Itemized Monthly Inventory Reports. With two months missing, Retailer Operations questioned if the retailer maintained these reports as a regular business practice. Such reports can be inflated or adjusted. Thus, Retailer Operations found that this evidence was not compelling as to the arguments advanced by counsel. The reports list groceries, candy, ice and drinks, as well as ineligible items in inventory. Retailer Operations did find that the inventory invoices did total to amounts that exceeded Appellant's SNAP redemption volume. Nevertheless, Retailer Operations did not find that sufficient inventory, in light of other questionable evidence, was sufficient to explain the transaction patterns at Appellant. It questioned that transactions of amounts as seen for example, in transaction numbers 45 to 59, at a gas station convenience store with limited staples foods, where legitimate.

While some households may have conducted legitimate SNAP transactions at Appellant, insufficient credible evidence was presented to more support this argument than not. The owner provided cash register tapes that Retailer Operations did not find credible and where not detailed as to what groceries, if any, were actually transacted. No federal business tax returns or actual state tax filings were provided. No business banking statements were submitted. The recipient affidavits did not support the shopping behaviors attested to. The HHS' shopping histories demonstrate that the affiants' claims did not conform to their actual transactions at Appellant. Thus, while evidence was advanced, it was not sufficiently persuasive as to the legitimacy of the transaction patterns at Appellant. On review, Appellant has not provided a preponderance of evidence that the transactions on the Attachments are for eligible foods rather than the result of trafficking.

The regulations at 7 CFR § 278.6(a) state that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, and that such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through, inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system. As noted herein, Appellant has the burden of providing credible, relevant evidence, which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than not true. This burden has not been met.

CIVIL MONEY PENALTY

The regulations at 7 CFR Section 278.6(i) specify the criteria for a firm's eligibility for a CMP in lieu of permanent disqualification for trafficking. The four criteria listed at the cited regulation are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for CMP consideration. The owner did not provide documents as evidence that the store

had a compliance policy in place. The owner did not submit documentation to support Appellant's training program. No documentation of dated training curricula and dates of training sessions prior to the violations, no records of dates of employment of all firm personnel, or contemporaneous documentation of participation of violating personnel in initial and follow-up training prior to violations were provided.

Given the lack of a timely substantial evidence submission which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the program in support of a CMP, the owner did not meet the criteria for a CMP. That the firm was not found to have violated the regulations during a USDA investigation in 2018, is not evidence of a substantial submission as required by the regulations. Nor is not having a record of previous violations equivalent to meeting the regulatory criteria enumerated.

CONCLUSION

Retailer Operations' analysis of Appellant's SNAP transaction data was the primary basis for its determination to permanently disqualify Appellant. The record also included onsite store photographs, an onsite store inventory report, and HH shopping analyses that provided substantial evidence that the questionable transaction patterns during the review period had characteristics that are consistent with trafficking SNAP benefits.

In the absence of a preponderance of credible evidence of the legitimacy of the transaction patterns presented by Appellant, the evidence more supports that violations did occur as charged by Retailer Operations. Retailer Operations denial of a trafficking CMP was also proper per the applicable regulations. Therefore, the decision to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations, with respect to applicable rights to judicial review of this decision. If 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 Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

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

M. Viens
ADMINISTRATIVE REVIEW OFFICER

March 4, 2020