

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

Qwik Stop,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0219259

FINAL AGENCY DECISION

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against Qwik Stop (hereinafter Appellant) from participating 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 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on September 16, 2019.

AUTHORITY

According to 7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1, “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

By letter dated August 15, 2019, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in January 2019 through May 2019. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through its representative, responded to the charges in a letter dated August 26, 2019, that admitted to offering credit and requested a CMP, but did not provide any documentation in

support of a CMP. Upon receipt of the response admitting to offering credit, evidence of credit accounts was requested by letter dated August 26, 2019, that was received by Appellant on August 27, 2019. Appellant failed to respond to this request. The Retailer Operations Division notified Appellant by letter dated September 16, 2019, that the firm was permanently disqualified from participation as a SNAP retailer in SNAP in accordance with 7 CFR § 278.6(c) and 278.6(e)(1) for trafficking violations. This letter also stated that Appellant was not eligible for the CMP because insufficient evidence was submitted to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By letter dated September 25, 2019, Appellant appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that 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 untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) 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(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(e)(1)(i) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined in part as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". Trafficking includes "Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food".

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."

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).” Part 278.6(b)(2)(ii) further states that if a firm fails to request a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the specified 10 days, the firm shall not be eligible for such a penalty.

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 on review were based on an analysis of SNAP EBT transaction data during the five month period of January 2019 through May 2019. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

The following may represent a summary of Appellant’s contentions in this matter; however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

- During the time that documentation was to be provided, the firm was being audited by the Texas State Comptroller's office and the owners were exhausted by having to close out the audit, pay the audit penalties, as well as compile their liquid assets in order to provide the necessary amount for the Sales Tax Bond in order for the business to continue operations;
- The owners did not engage in trafficking, but do understand that they did violate SNAP regulation 278.2(f), in which credit was given to individuals with SNAP benefits. The firm is a small business located in an area that is heavily dependent on SNAP recipients, therefore, in order to maintain rapport with customers, the owners felt this was the only option. In hindsight, they do realize that this was the incorrect manner in going about this;
- The owners attached receipts for transactions from the listed dates and accounts for regular members as requested by FNS. Documentation is also provided regarding the audit showing that the owners were involved in an audit at the time the documentation was requested; and,
- A CMP is requested based on the below responses:
 - Criterion 1: The store is self-run and the owner does know about food stamp policies regarding selling appropriate items to food stamp holders, but he was unaware of the credit aspect;

- Criterion 2: See above;
- Criterion 3: See above; and,
- Criterion 4: The store did not engage in any trafficking, please see above.

Appellant submitted EBT POS receipts for transactions, audit documents, and a request for administrative review from a different Houston store in support of these contentions.

ANALYSIS AND FINDINGS

Stores caught in trafficking violations consistently display particular, characteristic transaction patterns including those cited in the charge letter. 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. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

In the absence of evidence for the legitimacy of such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. Each Attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Store Background and FNS Store Visit

FNS authorized the firm on October 24, 2018. The record indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an October 15, 2018, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the firm's suspicious SNAP transactions. The store visit documented the following store size, description, and characteristics:

- The firm was a small convenience store offering a very limited quantity and variety of staple foods and carrying no other unique items or offering any distinctive services.
- The store stocked traditional American brands as well as an extremely limited stock of Hispanic foods. There were no other ethnic or specialty food items.
- The store visit report and photos showed no shopping carts or handheld baskets for customer use thus severely limiting the amounts of food that could be moved to the checkout.
- No food packages, bundles, case sales, bulk items, or other sales were evident that would explain the unusual transactions and no cased items were available for purchase except for water.
- The store visit report specifically noted that the firm was not a specialty store and that there were no meat packages, fish specials, or fruit and vegetable boxes for sale.

- The checkout area was a night window set into a plastic security barrier leaving a very limited area for customers to place their purchases making it problematic to process large orders. The checkout area had one cash register, a POS terminal, and no optical scanner as confirmed by the store owner.
- The firm had a very limited stock of staple foods that also included many single serving and pre-packaged items with a significant portion of inventory in soda, candy, snacks, and other drinks as well as many ineligible items.
- The firm had no fresh or frozen unprocessed meat, no fresh or frozen unprocessed seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat, poultry, and fish; and jerky), no hot dogs, no sausages, no bacon, no deli meat, no packaged lunch meat, no frozen entrees, no frozen dinners, only one carton of eggs, no fresh fruit and vegetables, no frozen fruit and vegetables, five packages of dried beans, no other dried fruit and vegetables, no packaged nuts only single serving nuts, 100 percent fruit and vegetable juices, a limited stock of canned and packaged soups, a very limited quantity and variety of canned and packaged staple food items, no canned fruits, two single serving fruit cocktails, no deli cheese, no packaged cheese, no cream cheese, no large yogurt, no single serving yogurt, no single serving yogurt drinks, three packages of opened butter being sold by the stick, no margarine, no sour cream, three Tostitos cheese dips, two gallons of fresh milk, single serving fresh milk, no single serving milk drinks, canned milk, no coconut milk, no soy milk, no Lactaid milk, no powdered milk, no half & half, four bread, no rolls, no tortillas, two tostadas, no pitas, no corn meal, five flour, sugar, four rice, two boxes of cold cereal, 10 single serving cold cereal, no hot cereal, many single serving noodle soups, no canned pasta, no single serving pasta, dry pasta, dry noodles, no pancake mixes, no mac&cheese, no single serving size mac&cheese, no baking mixes, several frozen heat & eat foods (Jimmy Dean products, Hot Pockets, chimichangas, and sandwiches), cooking oil, coffee, tea, no cocoa, no baby foods, no baby cereal, no infant formula, no baby juices, and very few expensive staple food items.
- Ineligible items included: gasoline, tobacco, alcohol, lottery, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, gloves, candles, charcoal, lighter fluid, video gambling, incense, and electronics accessories while accessory foods included: candy, condiments, snacks, baked goods, sugar, single serving ice cream, spices, cooking oil, coffee, tea, and un/carbonated drinks.
- The firm's hours of operation were open 7:00 AM-11:00 PM Sunday-Thursday and 7:00 AM-1:00 AM Friday and Saturday per the owner. The owner also stated that the firm did not take phone or online grocery orders, did not deliver groceries, and did not round price totals up/down.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Most food items were priced and comments on the FNS store visit report, completed in conjunction with the owner, specifically stated that most food prices end in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the four most expensive food items costing more than \$5.00 for sale in the store as being: a 45 pack of water priced at \$7.99, a 3.2 ounce package of jerky priced at \$6.99, a four pack of Red Bull priced at \$6.99, and a 12 pack of Coke priced at \$5.99. It was noted that there were five containers of water, four packs

of Red Bull, seven packages of jerky, and 10+ packs of Coke in stock. This listing of the most expensive items was provided by the owner during the store visit.

- The firm was not a WIC vendor.
- The store visit report and photos showed empty or minimally stocked shelves, display racks, a chest freezer, and coolers. Additionally, many canned goods were dusty and their labels faded indicating a slow turnover of stock.

Multiple transactions in unusually short time frames

This Attachment documents 40 individual transactions in 17 sets of two or more transactions conducted by 19 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These also include six transactions ending in .00 cents representing 15 percent of the individual transactions that are not supported by store inventory or pricing structure. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These are unusually short amounts of time given the many steps required to complete a SNAP transaction combined with the firm's very small checkout area, few high priced eligible food items, no shopping carts, and no optical scanner. Six sets are comprised of three individual transactions while the remaining 11 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment. Multiple transactions conducted by the same household within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by store inventory and structure. These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant offered no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

Based on the very limited number of expensive items for sale at the Appellant firm, it is likely that transactions equaling or exceeding \$100.00 would consist of more than 20 items. SNAP benefit transactions involving legitimate food purchases require many steps: 1) the customer waiting for the previous customer to pick-up their purchases and leave the checkout area; 2) the customer making multiple trips bringing items to the checkout counter for large purchases since the firm has no shopping carts; 3) the cashier separating eligible from ineligible items; 4) the cashier handling individual items to determine the price, which in this case involves manual keying of amounts since there is no scanner; 5) the cashier weighing individual items if sold by weight; 6) the cashier entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases; 7) the cashier handling manufacturers cents-off coupons, if applicable; 8) the cashier bagging the items for carry-out; 9) the cashier informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions); 10) the cashier pressing the "SNAP transaction key" on the POS device/card reader; 11) the customer swiping their EBT card; 12) the customer entering their required PIN; 13) the cashier entry of the purchase amount; 14) the cashier confirming the customer has a sufficient benefit balance; 15) the transaction being processed by the system and receiving approval; 16) the cashier printing the EBT and cash register receipts; 17) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change; and 18) the customer removing products from the

checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in legitimate large SNAP purchases. One can readily surmise that while such transactions may be completed in succession, performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount the longer the time period between transactions. The very limited counter space as well as manually key-entering lengthy EBT card numbers adds additional time to transactions.

The Appellant firm processed large numbers of transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), markedly faster than supermarkets typically process purchases, yet the Appellant firm does not have an optical scanner or any of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant's stock could be processed in the times listed in this Attachment given the facilities at the firm. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation.

SNAP households have no limits on the number of times they may use their benefits or the dollar amount of eligible food they may purchase. The SNAP transactions at the Appellant firm 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 firm's stock and facilities and are thus indicative of trafficking. These transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out, of household members/friends shopping together and making separate purchases, or of households making a separate purchase to check their balance followed by another transaction as six of the 17 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant offers no explanation as to why households would conduct multiple sizeable transactions at a store with a very limited stock of staple foods within a short period of time when they are also shopping at the many comparably sized or larger food stores located nearby that includes a medium grocery store located only four blocks from Appellant's location. The availability of other larger SNAP stores nearby combined with the firm's very limited stock of staple foods makes it unlikely that any household would consider the Appellant firm as their primary source for groceries.

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that subsequent transaction dollar amounts are substantial in these transaction sets and that all of the sets in this Attachment 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when the comparable average convenience store SNAP transaction amount in Harris County during the review period was \$7.66. It is also unusual and suspicious that nearly half (eight) of the 17 transaction sets in this Attachment end in whole dollar amounts of .00 cents based on the firm's pricing structure and the lack of high priced eligible food items. These whole dollar multiple transactions indicate that the individual transaction amounts were contrived in an attempt to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. FNS

transaction data shows that this same pattern of multiple transactions in unusually short time frames is not evident at other nearby like type grocery stores further supporting that trafficking was occurring at the Appellant firm during the review period.

The Retailer Operation Division's analysis of shopping patterns for Attachment households shows they have ready access to transportation as evidenced by their shopping at a variety of comparably sized or larger food stores located nearby and at a distance from Appellant's location, including super stores and supermarkets. The analysis also shows these households shopped at the Appellant firm and a super store and/or supermarket 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and inexplicably often spent more at the Appellant firm than at super stores and/or supermarkets. Appellant failed to offer any explanation or rationale as to why households who are regularly shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases often totaling to comparable or higher dollar amounts at a very minimally stocked store. There is no legitimate reason why households would spend so much of their SNAP allotment at the Appellant firm when they clearly had access to and frequently shopped at super stores and supermarkets. Common sense dictates that it is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore the more plausible explanation is that these households were trafficking SNAP benefits at the Appellant firm.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

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It is highly unlikely that the Appellant firm stocked any eligible food items that would not be available at the supermarkets and other larger grocery stores the above households were regularly shopping at and these stores would also likely have significantly lower food prices yet these three households continued to spend large dollar amounts at a convenience store with a very limited stock of staple foods. Other households analyzed exhibited similar shopping patterns indicative of trafficking. There is no legitimate reason why these households would spend so much of their SNAP allotments at a very minimally stocked convenience store when they clearly had access to and frequently shopped at nearby and distant supermarkets and super stores. Appellant also offered no explanation as to why households residing at a significant distance would use their limited cash resources to travel up to 24 miles round trip from their normal shopping areas to shop at Appellant's very minimally stocked convenience store. The Texas SNAP database also yielded an additional household in this Attachment with a reported residence located 3.0 driving miles from Appellant's location.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar

value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

High Dollar Value Transactions

This Attachment lists 50 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a store offering a very limited stock of staple foods and calls into question the legitimacy of these transactions. The transactions are substantially higher than the average SNAP transaction amount of \$9.74 for this store type in Harris County. This is unusual and indicative of trafficking as previously discussed.

The evidence under review shows that SNAP households shopping at the Appellant firm are also shopping at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location, that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant firm. These high dollar value transactions remain questionable when considering the proximity of the other stores that would be better shopping options for consumers. Based on their shopping patterns, transportation does not appear to be an issue for these households. Yet, they continue to shop and spend suspicious high dollar amounts at the Appellant firm, where the eligible food stock is limited, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of their purchases at larger food stores.

While households residing in areas with extremely limited grocery store options may conduct high dollar transactions at convenience stores out of necessity, this is not the case when they have better alternatives. FNS records show there are 14 comparably sized or larger SNAP retailers located within a 1.0 mile radius of the Appellant firm that includes one supermarket, one medium grocery store, two small grocery stores, and 10 convenience stores with the medium grocery store being located only four blocks from the Appellant firm. There are also additional supermarkets and super stores located further away. These many larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a very minimally stocked convenience store.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Harris County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction amount is 43.34 percent larger than that of Harris County convenience stores while its average SNAP transaction dollar volume is 10.82 percent smaller and its total SNAP transaction count is 7.59 percent larger than the County average. A comparison of Appellant's SNAP redemptions to that of nearby like type stores having redemptions for the review period shows that none exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant firm even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is further indication that the transactions in this Attachment and the previous do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

The firm also had irregular SNAP transaction data compared to like type stores in Harris County. A comparison of Appellant's redemption data to the average for County convenience stores using ten dollar increments shows that Appellant's transaction count and dollar volume is significantly lower than that of like type stores in all ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unusual that like type Harris County convenience stores begin averaging less than one transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C), approximately one-half that of the Appellant firm. The Appellant firm also has unusual spikes in the number and dollar volume of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) over the same period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This transaction pattern and the unusual spikes in both transaction number and dollar volume do not appear in the transaction patterns or in the transaction count and dollar volume averages for other like type stores. These large dollar transactions are considered to be irregular and suspicious based on the firm's food inventory. The Retailer Operations Division determined there was no credible reason for the firm to have transactions at these dollar levels given the very limited stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant again offered no documentation or explanation to support the legitimacy of the listed transactions in this Attachment.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and store stock. A shopping pattern analysis by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting high dollar transactions, yet are conducting comparable or higher dollar transactions at the Appellant firm. It makes no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant firm since its cost of goods is higher than that of larger stores such as supermarkets or super stores.

Information obtained during the FNS store visit shows that the Appellant firm offers a very limited stock of staple foods that also includes many single serving and pre-packaged items with a significant portion of inventory in drinks, candy, and snacks as well as many ineligible items. The fact that gasoline, tobacco, alcohol, lottery, household products, paper products, pet products, auto products, health and beauty items, ATM, hats, gloves, candles, charcoal, lighter fluid, video gambling, incense, and electronics accessories are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts.

Higher food prices make it even more unlikely that SNAP recipients, with very limited food benefits, would want to spend a considerable part of their benefits in a store that does not address all of their food needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores also offer store brand products at lower prices, weekly specials, and have shopping carts and checkouts with built-in scanners and conveyor belts to facilitate processing purchases quickly. Additionally, Appellant furnished no itemized cash register and corresponding EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant

months. The firm also has a very small checkout area and no shopping carts or handbaskets thereby making it extremely difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. The fact that the firm carries a very limited stock of staple food items also makes it improbable that the high dollar transactions in this Attachment were for the purchase of eligible food items and more likely that the amounts were contrived.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Credit Contentions

Appellant contends the firm allows credit accounts, a violation of SNAP regulations at Section 278.2(f), as evidenced by Appellant's written statements. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom store ownership may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. When store ownership signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It agreed to accept responsibility for SNAP violations including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. This certification page specifically cites violations such as accepting SNAP benefits as payment on credit accounts or loans. The certification is clear that ownership understood by signing the document that violations of program rules can result in administrative actions such as fines, sanctions, withdrawal, or disqualification from the SNAP. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the firm allowed credit accounts, a clear violation of SNAP rules and regulations. Additionally, the SNAP Retailer Training Guide and the training video, provided to all retailers upon initial authorization, cite credit accounts as violating SNAP regulations. Had store ownership reviewed the SNAP training materials or trained its employees using them, it is inconceivable that it would not have been aware that credit accounts violate SNAP regulations.

Ownership's admission to extending credit is documented in the case file under review and is not contested. Accepting SNAP benefits for payment on credit is a violation of Section 278.2(f) and warrants a one year disqualification period as specified by Section 278.6(e)(4). It is the agency's position that credit violations constitute owner or management involvement and that a one year disqualification is the base sanction. To refute charges of trafficking, the retailer must provide adequate proof that credit accounts existed at the time the suspicious transactions occurred so that a comparison can be made with transactions outlined in the charge letter. A level of detail regarding the legitimacy of credit accounts is necessary since retailers have long admitted to credit in an attempt to garner a lesser penalty after committing more egregious violative acts. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items. If such exculpatory evidence is not advanced, the appropriate penalty is permanent disqualification.

In support of the admission to accepting SNAP benefits for payment on credit accounts, Appellant submitted EBT point of sale (POS) receipts provided contain only the date, time, and the amount of the transaction.

Appellant did not provide a detailed or itemized breakdown by household of what items were purchased on credit, their unit cost, dates of purchases, how many credit purchases were made during the month, or the dates and dollar amounts of credit payments. The EBT POS receipts submitted by Appellant provide no evidence of the legitimacy of the charge letter transactions nor do they constitute proof of credit accounts.

Accordingly, the documents offered do not provide substantial evidence that the firm permitted credit accounts during the review period. Since Appellant was unable to account for any of the charge letter transactions as being due to credit, the original determination made by the Retailer Operations Division was evaluated to determine if trafficking occurred. The transactions showed clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity indicative of trafficking as previously discussed.

Additionally, it was noted that the documents attached to Appellant's September 25, 2019, correspondence included a copy of a letter from a different Houston firm to FNS requesting administrative review. Common sense suggests that Appellant was using this letter as a template for its own administrative review request as both contain similar wording and therefore cast doubt onto the legitimacy of Appellant's allegations.

Other Contentions

The purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division and is limited to what circumstances were at the basis of the action at the time such action was made. In an appeal of an adverse action, the Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means the Appellant has the burden of providing relevant evidence that 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 untrue. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

The ownership and the firm were charged with trafficking based on a computer analysis of the store's transactions for the review period. The charges do not derive from the use of a confidential informant or independent investigator who visited the store and made illegal purchases to support findings of trafficking, but by a computer program used by SNAP Administrators. While traditional undercover operations are still in use by USDA, for many years federal regulations have also authorized the use of evidence consisting of EBT transaction data in investigations of SNAP retail stores to determine if trafficking is occurring and U.S. District Courts have long upheld the validity of EBT transaction data.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed

below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food". SNAP regulations at 7 CFR § 278.6(a) clearly 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, 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". In the present case, the data presented in the Attachments is solely based on the SNAP EBT transactions conducted at the Appellant firm during the review period. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the review period. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photos from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant firm during the review period. This analysis also included a review of the firm to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of 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 charge letter evidence trafficking as the most likely explanation for the questionable transactions listed. It is herein determined that Appellant did not provide a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments is due primarily to trafficking in SNAP benefits.

The Food and Nutrition Act of 2008, as amended, and the regulations issued pursuant thereto do not cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification "shall be permanent upon the first occasion of a disqualification based on trafficking by a retail food store." In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved and second chances are not an

authorized option under existing regulations.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Based on the above discussion and the evidence under review, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division's decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division presented a case that Appellant has likely trafficked in SNAP benefits. Their analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, the Retailer Operations Division properly determined that Appellant was not eligible for a trafficking CMP according to Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for

the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, 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.

ROBERT T. DEEGAN
ADMINISTRATIVE REVIEW OFFICER

January 13, 2020