

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

**Raffy Mini Mart Food Corp,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0216600**

**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 Raffy Mini Mart Food Corp (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 June 11, 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 May 22, 2019, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in October 2018 through January 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).

Ownership did not respond to the charge letter and no evidence was submitted to be considered in support of the CMP. The Retailer Operations Division notified Appellant by letter dated June

11, 2019, that the firm was permanently disqualified from participation as a SNAP retailer 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 June 14, 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 four month period of October 2018 through January 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:

- The charge letter arrived when the owner was out of the country and the clerk set it aside and failed to open it. Attached is documentation confirming this;
- The trafficking allegation is false as shown by the attached receipts;
- The owner has had the store for five years and there are repeat buyers every day. He has reviewed the transactions listed and the customers shop once, twice, or three times a day because they forget something and return to the store to purchase it. The store has great customer service and provides a great and clean atmosphere. Spanish people are always forgetting something and always return to the store because of the cleaning and good treatment; and,
- The store lives off SNAP purchases and the owner would be forced to sell without them.

Appellant submitted copies of the owner’s passport, social security card, flight itinerary, and many invoices/receipts for inventory purchases in support of these contentions.

### **ANALYSIS AND FINDINGS**

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why

opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

The Retailer Operations Division presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant's store 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 initially authorized the firm on April 29, 2014. While the firm has no record of SNAP violations, the record does show that the firm was charged for violating WIC rules and regulations and paid a fine or CMP in lieu of disqualification. The record indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 6, 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 good sized convenience store offering a minimal 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 a limited variety of canned and packaged Hispanic foods, primarily Goya products. There were no other ethnic or specialty food items.
- The store visit report and photos showed no shopping carts or hand 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 beverages.
- 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.
- There was only one checkout area that was approximately 2.5 feet wide and 2.0 feet deep set into a plastic display wall leaving a limited area for customers to place their purchases. The very small checkout area would make 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 minimal 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 a kitchen/food prep area that included a large refrigerated deli display case that contained deli meat, deli cheese, packaged cheese, eggs, butter, margarine, reheatable sandwiches, and a limited selection of fresh fruits and vegetables. The kitchen area contained a cooktop grill, commercial slicer, microwave oven, and a commercial toaster. There were large menu boards advertising a variety of hot and cold prepared foods, hot

breakfast items such as bagels and eggs, and deli meats and cheeses sold by the pound. The store visit report noted that food items were being used for the preparation of the hot and cold prepared foods making it difficult to determine which food items were for sale and which were primarily used to prepare the hot and cold foods.

- The firm had no fresh or frozen unprocessed meat, no fresh or frozen unprocessed seafood except for two packages of Pollock fillets, a limited quantity and variety of processed meats and seafood (canned meat, poultry, and fish; hot dogs; sausages; bacon; and deli meats), no packaged lunch meats, no frozen entrees, no frozen dinners, eggs, a limited selection of fresh fruit and vegetables, no frozen fruits or vegetables, dried vegetables, no dried fruit, no packaged nuts, a limited stock of single serving nuts, 100 percent fruit juices, single serving 100 percent fruit juices, no 100 percent vegetable juices, a minimal selection of canned soups, a minimal quantity and variety of canned and packaged staple food items, deli cheese, a limited selection of packaged cheese, no yogurt, no single serving yogurt, four packages of butter, margarine, two containers of sour cream, fresh milk, canned milk, coconut milk, six soy milk, no Lactaid milk, no powdered milk, no single serving milk drinks, two cream cheese, bread, three rolls, tortillas, no pitas, no tostadas, corn meal, flour, sugar, rice, cold cereal, no single serving cold cereal, hot cereal, many single serving Ramen noodle soups, canned pasta, single serving pasta, dry pasta, no dry noodles, pancake mixes, baking mixes, several refrigerated sandwiches, mac&cheese, no single serving size mac&cheese, cooking oil, coffee, tea, cocoa, baby foods/cereals, infant formula, and few expensive staple food items.
- Ineligible items included: tobacco, lottery, alcohol, hot food and drinks, household products, paper products, auto products, pet products, health and beauty items, ATM, diapers, candles, and cell phones/phone cards while accessory foods included: candy, condiments, snacks, baked goods, cooking oil, sugar, single serving ice cream, spices, coffee, tea, cocoa, baking mixes, and un/carbonated drinks.
- The firm's hours of operation, as confirmed by the store owner, were open 7:00 AM-10:30 PM daily per the store owner. The owner also stated that the firm did not take phone or online orders, did not deliver groceries, and did not round transaction 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 individually priced and comments on the FNS store visit report, completed in conjunction with the store 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, excluding meat packages, as being: a 12.4 ounce container of infant formula priced at \$21.99, a 12.5 ounce container of infant formula priced at \$20.99, a 20 pound bag of rice priced at \$11.99, and a one gallon container of cooking oil priced at \$11.49. It was noted that there were only two bags of rice and three containers of oil in stock. This listing of the most expensive items was provided by the store owner during the store visit.

- The firm was a WIC vendor. Most SNAP households with infants or small children are WIC participants and therefore would be purchasing products such as formula or baby foods using WIC vouchers, not SNAP EBT benefits.

### **Multiple transactions in unusually short time frames**

This Attachment documents 46 individual transactions in 18 sets of two or more transactions conducted by 13 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C)4. The dollar amounts of subsequent transactions in each set are substantial and nearly equal or exceed the dollar amount of the initial transaction in 16 of the 18 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Four sets by three households consist of manually keyed transactions. One set is comprised of five individual transactions and seven sets are comprised of three individual transactions, while the remaining 10 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 contends there are repeat buyers every day. The owner has reviewed the transactions listed and the customers shop once, twice, or three times a day because they forget something and return to the store to purchase it. The store has great customer service and provides a great and clean atmosphere. Spanish people are always forgetting something and always return to the store because of the cleaning and good treatment.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment 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. 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 all of the 18 transaction sets 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as all of the sets have subsequent transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), far more than the cost of a forgotten item or two. Appellant also offers no explanation as to why households would conduct up to five sizeable transactions at a minimally stocked store within a short period of time when there are 219 comparably sized or larger retail food stores located nearby that include two super stores located two and three blocks away and two supermarkets both located six blocks away from Appellant's location making it unlikely that any SNAP recipient 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 Kings County during the review period was \$10.07. These multiple transactions indicate that the 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 period under review.

The Retailer Operation Division's analysis of shopping patterns for households listed in this Attachment 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. Their analysis also showed numerous households that shopped at the Appellant firm and a super store and/or supermarket 5 U.S.C. § 552 (b)(6) & (b)(7)(C) inexplicably spent more at Appellant's convenience store than they did at the 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 minimally stocked grocery 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 supermarkets and super stores. 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.

For example, a single person household, based on its SNAP allotment, conducted two transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant firm on one day. The very next day it spent 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at a convenience store located more than 9.2 miles away from Appellant's location and 5 U.S.C. § 552 (b)(6) & (b)(7)(C) later 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the Appellant firm. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A review of this household's shopping pattern shows it shopped at a total of 20 other stores during the review period and that 14 of these 20 stores were located more than 1.6 miles away from Appellant's location with most transactions being conducted at stores located more than 9.2 miles away indicating that this household likely does not reside near the Appellant firm, yet travelled miles out of its way to shop there. There is no legitimate reason why this household would spend so much of its SNAP allotment at a minimally stocked convenience store when it clearly had access to and frequently shopped at supermarkets and super stores located nearby and at a distance. The more plausible explanation is that this household was trafficking at the firm. Other households analyzed exhibited similar shopping patterns indicative of trafficking.

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 153 individual EBT 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 minimal stock of staple foods and calls into question the legitimacy of these transactions. The transactions are also substantially higher than the average SNAP transaction amount of \$10.07 for this store type in Kings County. This is unusual and indicative of trafficking.

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 219 comparably sized or larger SNAP retailers located within a 1.0 mile radius of the Appellant firm that includes six super stores, 16 supermarkets, six large grocery stores, 13 medium grocery stores, and 57 small grocery stores. The many larger stores would offer greater quantities and varieties of staple food items at lower prices than would be found at a minimally stocked convenience store offering no fresh or frozen unprocessed meats or seafood except for two packages of Pollock fillets and carrying a limited selection of fresh fruit and vegetables.

The difference in the average SNAP transaction amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Kings County convenience stores during the review months and at the Appellant firm is significant. Appellant's average SNAP transaction amount is 9.33 percent smaller than that of Kings County convenience stores while its average SNAP transaction dollar volume is 5 U.S.C. § 552 (b)(7)(E) larger and its total SNAP transaction count is 5 U.S.C. § 552 (b)(7)(E) larger than the County average. The extremely high number of SNAP transactions and dollar volume combined with the very low average SNAP transaction dollar amount is an indication the firm may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. 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 Kings 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 significantly exceeds that of like type stores in all ranges 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is unusual that Kings County convenience stores do not begin averaging less than one transaction in each range 5 U.S.C. § 552 (b)(6) & (b)(7)(C), twice that that of the Appellant firm and is further evidence that the Appellant firm is dividing larger transactions into multiple transactions. This transaction pattern does not appear in the transaction patterns 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 minimal 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 states the trafficking allegation is false as shown by the attached invoices and receipts for inventory purchases.

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 on September 6, 2018, shows that the Appellant firm offers a minimal quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Much of the inventory for sale consists of inexpensive snacks, candy, drinks, and various single serving foods as well as many ineligible items. The fact that tobacco, lottery, alcohol, hot food and drinks, household products, paper products, auto products, pet products, health and beauty items, ATM, diapers, candles, and cell phones/phone cards 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 EBT receipts for the period under review to document the

legitimacy of these excessively large transactions. 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 minimal 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.

A detailed analysis of invoices and receipts submitted for inventory purchases was conducted by the Retailer Operations Division and the dollar amount of eligible food purchases plus markup compared to the firm's SNAP redemptions for the review period. The Retailer Operations Division analyzed the information provided and applied a standard 40 percent markup to the inventory purchase totals to arrive at a potential sales amount. Their analysis determined that the firm had insufficient stock to support SNAP redemptions during the months under review as the potential sales amount was approximately one-third that of the firm's SNAP redemptions over the same period. Insufficient inventory is an indication of trafficking.

It is further noted that SNAP redemptions at the Appellant firm fluctuated unusually following receipt of the charge letter on May 23, 2019. The volume of SNAP redemptions at the Appellant firm decreased 46.09 percent May 2019 to June 2019 while the number of SNAP transactions decreased 51.79 percent over the same period of time. A pronounced fluctuation in SNAP redemptions following the receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

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

### **Other Contentions**

Regarding Appellant's denial of trafficking, 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. When store ownership signed the certification page of the SNAP retailer authorization application to become a SNAP retailer, it confirmed it understood and agreed to abide by program rules and regulatory provisions. It also agreed to accept responsibility on behalf of the firm for violations of the SNAP including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time. The certification is clear that store 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.

The owner 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.

It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to the firm or to ownership resulting from imposition of such penalty. To allow ownership to be excused from an assessed administrative penalty based on purported economic hardship to the firm would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008, as amended, and the enforcement efforts of the USDA. Furthermore, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, ownership's contention that the firm may incur economic hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

### **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 request or 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

September 10, 2019