

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

Rajman Inc/Stop & Go,

Appellant,

v.

Case Number: C0208213

Retailer Operations Division,

Respondent.

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 Rajman Inc/Stop & Go (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 14, 2018.

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 9, 2018, the Retailer Operations Division charged Appellant with trafficking based on a series of irregular SNAP transaction patterns that occurred in October 2017 through March 2018. 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 responded to the charges in phone calls on May 10 and May 17, 2018, that admitted to the firm extending credit. The Retailer Operations Division requested evidence of the existence of credit accounts by letter dated May 17, 2018. Appellant responded in two letters dated May 21, 2018, submitted by fax that stated the firm had stopped issuing credit, had no evidence of credit accounts, and requested a trafficking CMP if found guilty of trafficking.

The Retailer Operations Division notified Appellant by letter dated June 14, 2018, 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 22, 2018, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested administrative review. The appeal was granted. No subsequent correspondence was received from counsel.

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 § 278.2(f) states, inter alia: “Coupons [SNAP benefits] shall not be accepted by an authorized retail food store in payment for items sold to a household on credit.”

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 six month period of October 2017 through March 2018. 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 firm is a family business owned by the parents and their son who lives in New Jersey and has nothing to do with daily store operations. There are no other employees;
- The firm was purchased in December 2014 and received a SNAP license in 2015. The firm is located in a low income neighborhood with a high concentration of refugees from Eastern Europe. The average family consists of 5-8 children, inclusive of

- extended families. The firm is the only convenience store within a 2-3 mile radius and a lot of customers use SNAP to buy their groceries from the store. Many of the residents in the area do not have cars so spend a lot at the store. This store is open until 11 PM seven days per week. There is only one other store within a two mile radius of this store;
- The firm's business model is based on catering to international foods consumers and this accounts for the more expensive and specialized products that cannot be purchased elsewhere. The firm also sells high volumes of meats (entire animals in a single transaction) and vegetables that are purchased in high frequency. The firm is fully stocked with EBT eligible items and shopping buckets are provided for large transactions. The firm has a high volume of sales incorporating both EBT and non-EBT sales. There have never been any violations of USDA and/or SNAP laws and never any investigations for trafficking;
 - Ownership disagrees that the transactions were unusual, irregular, or inexplicable and strongly denies trafficking. The parents told the son the high dollar transactions are due to credit accounts. They have been extending credit to a few select regular customers for three plus years when they were unable to pay. The customers buy food items on credit and pay when they receive their SNAP benefits. The parents keep the receipt for credit purchases until the customer pays it off and then it is thrown away. This is the parent's first business and they were not aware that credit was not allowed with SNAP. The parents run the business honestly and there hasn't been any trafficking at the store. They have stopped allowing credit and have told their customers, who have said they would submit affidavits attesting to the credit. The firm does not keep cash register receipts so cannot provide them for 2017. A lot of the flagged irregular transactions occurred at the beginning of the month due to the fact that households buy groceries throughout the month on credit and pay it off at the beginning of the month when they receive their benefits. Sometimes customers pay off their credit and end up buying more groceries causing multiple EBT transactions in the same time period. Ownership can provide signed receipts of when credit was given;
 - If FNS determines the firm violated SNAP regulations then a CMP is requested if eligible. The firm already meets the criteria having established an effective compliance policy and an effective training program in 2014. A copy of the compliance policy is given to each employee upon receipt of an employee application. If the applicant is hired, management trains them on how to comply with SNAP and EBT regulations. The policy requires ongoing training and testing for new employees. Training and testing is quarterly for the first year and a proficiency of 80% is required for the employee to continue working for the next quarter. Employee with one or more years of service are required to complete training and testing annually with a proficiency of 80% required. Training materials are attached and ownership did not benefit from any alleged violations and were not aware of nor did they approve any violative activity;
 - The owners operate the business and review their SNAP manual on an annual basis. Upon becoming an EBT vendor in 2015, the owners used the CD and information provided by USDA for training. The firm's compliance policy clearly states that only

- EBT qualified items will be sold to SNAP customers and that customers cannot share EBT cards;
- Criterion 1 is met as the owners read all of the materials on time regarding EBT use, rules, and misuse. They wholly abide by the rules;
 - Criterion 2 is met as the compliance policy was current and did not change since the onset of the business;
 - Criterion 3 is met as the firm's training program consists of reviewing the CD and other literature provided by the USDA. Both of the owners review this material; and,
 - Criterion 4 is met as the owners did not benefit by any alleged trafficking, their EBT sales are only 5 percent of their gross sales, and there was no gain to the owner of the business.

Appellant submitted undated Certificates of Completion for SNAP training for two of the store owners for the years 2014-2018, a photo of the cover of the FNS Training Guide for Retailers along with other indistinguishable papers, an unsigned/undated affidavit by one of the owners describing the firm's training program, an unsigned/undated affidavit by an unnamed employee confirming the training program, three statements by individuals claiming to shop at the firm, invoices for inventory purchases, a listing of mark-ups for 36 items, photos of EBT products, and copies of tax returns 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 November 19, 2015. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 16, 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 typical convenience store offering a very minimal quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The store primarily stocked traditional American brands, but also had a very limited stock of Hispanic (e.g. Goya) products.
- The store visit report and photos showed no shopping carts or hand baskets for use by customers making it difficult for them to carry large amounts of food 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 except for drinks.
- The store visit report specifically notes that the firm was not a specialty store and that there were no meat bundles or fruit and vegetable boxes for sale.
- The sole checkout area was approximately 1.5 feet deep and 1.5 feet wide with many displays and PIN pads taking up space on both sides reducing the available area for customers to place their purchases. The extremely small size of the checkout area would make it problematic to process large orders. The checkout area had one cash register, an optical scanner, and one POS terminal as confirmed by a store owner.
- The store had a very 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 store had no fresh unprocessed meat or seafood, no frozen unprocessed meat or seafood, a very limited quantity and variety of processed meats (canned meat/poultry/fish, seven packages of bacon, two packages of lunch meat, two packages of hot dogs, single serving jerky, and sausages), no processed seafood except for canned fish, no deli meats, no frozen entrees, no frozen dinners, only five cartons of eggs, an extremely limited selection of fresh fruit (only bananas, limes, and apples) no fresh vegetables, no frozen fruits/vegetables, a limited selection of nuts, a limited selection of canned soups, a minimal quantity and variety of canned and packaged staple food items, no deli cheeses, a very limited quantity and variety of packaged cheeses, only one yogurt, no sour cream, no margarine, no baby cereals or foods, only one infant formula, only three loaves of bread, only one package of rolls, only two pitas, no tortillas, no tostadas, no corn meal, a limited selection of cold cereals, only four hot cereals, many single serving noodle soups, a very limited selection of dry pasta, no dry noodles, a limited stock of mac&cheese, single serving mac&cheese, and very few expensive staple food items.
- Ineligible items included: alcohol, tobacco, tobacco accessories, lottery, household products, paper products, pet products, auto products, health and beauty items, ATM, clothing, hats, purses, diapers, lighter fluid, charcoal, candles, money orders, and party supplies while accessory foods included: candy, spices, condiments, snacks, baked goods, baking mixes, cooking oil, sugar, single serving ice cream, ice cream, coffee, tea, cocoa, and un/carbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- The firm's hours of operation were 7 AM-11 PM Monday-Friday, 8 AM-11 PM Saturday, and 9 AM-11 PM Sunday as confirmed by the store owner. The store owner

also stated that the business did not take phone or online grocery orders; did not deliver groceries; and did not round prices up/down.

- Most food items were priced with all visible food prices ending in .x9 cents. Comments on the FNS store visit report 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 also listed the four most expensive items costing more than \$5.00 for sale in the store as being infant formula at \$31.99, coffee at \$11.99, jerky at \$8.99, and cold cereal at \$6.79. This listing of the most expensive items was provided by the store owner during the store visit.
- The firm was not a WIC vendor. While the firm did stock one container of infant formula, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers, not SNAP EBT.
- The store visit report and photos showed empty or marginally stocked shelves indicating a slow turnover of stock and the quantity and variety of the store's staple food inventory was significantly less than that seen during the previous FNS store visit on November 13, 2015.

Multiple transactions in unusually short time frames

This Attachment documents 29 individual transactions in 12 sets of two or more transactions conducted by five different households in a short period of time. One household was responsible for four of the 12 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of subsequent transactions in each set are substantial and they nearly equal or exceed the dollar amount of the initial transaction in four of the 12 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One set is comprised of four individual transactions, three sets are comprised of three individual transactions, and the remaining eight 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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant contends that a lot of the flagged irregular transactions occurred at the beginning of the month due to the fact that households buy groceries throughout the month on credit and pay it off at the beginning of the month when they receive their benefits. Sometimes customers pay off their credit and end-up buying more groceries causing multiple EBT transactions in the same time period.

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. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It would make no sense for a household to make two separate trips to the Appellant firm on the same day, once to buy groceries and a separate trip to pay their credit account. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Appellant's contentions also provide no explanation as to why households would conduct three or four sizeable transactions at the Appellant firm within a short period of time.

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 Hampden County during the review period was \$7.57. 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 the shopping patterns for households listed in this Attachment shows that they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from Appellant's location, including a variety of super stores and supermarkets. Appellant's contentions fail to offer any explanation or rationale as to why households who are shopping and spending large dollar amounts at many larger and better stocked stores would conduct multiple purchases totaling to high dollar values at a very minimally stocked store. 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 more likely than not that these households were trafficking SNAP benefits at the Appellant firm.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The inventory and layout of the Appellant firm do not support these transactions. There is no legitimate reason why this household would spend so much of their SNAP allotment at this very minimally stocked convenience store when they clearly had access to and frequently shopped at supermarkets and superstores located nearby and at a distance. The more plausible explanation is that this household was trafficking at the firm. Other households analyzed by the Retailer Operations Division had similar suspicious 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. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

High Dollar Value Transactions

This Attachment lists 100 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a grocery store offering a very 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

\$7.57 for this store type in Hampden 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. The high dollar value transactions remain questionable when considering the proximity of these 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, these recipients 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) often on the same day, or within 24-48 hours of their purchases at larger food stores.

While households residing in areas with extremely limited grocery store options may conduct high dollar value transactions at convenience stores out of necessity, this is not the case when households have better alternatives. FNS records show there are 24 comparably sized or larger SNAP retailers located within a one mile radius of Appellant that includes two supermarkets, a super store, and a medium grocery store that offer greater quantities and varieties of staple food items at lower prices than would be found at a very minimally stocked convenience store offering no fresh or frozen unprocessed meats or seafood and very limited fresh and no frozen produce. Contrary to Appellant's statement that the firm is the only convenience store within a 2-3 mile radius and that there is only one other store within a two mile radius of this store, the FNS retail store database shows there are two supermarkets, one super store, and one medium grocery store located within a one mile radius as well as two convenience stores 0.39 and 0.48 miles away. The closest supermarket is located 0.69 miles away.

The difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the total SNAP transaction count for Hampden County convenience stores during the review months and at the Appellant firm is significant. Appellant's SNAP transaction dollar volume is 33.94 percent larger than that of Hampden County convenience stores and its average SNAP transaction dollar amount is 88.24 percent larger than the County average while its average SNAP transaction count is 28.9 percent smaller than like type stores. 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 a further indication that the transactions in this Attachment and the others 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 Hampden County. A comparison of Appellant's redemption data to Hampden County convenience stores using ten dollar increments shows that Appellant's transaction count and dollar volume are significantly below the average of like type stores 5 U.S.C. § 552 (b)(6) & (b)(7)(C) where typically the majority of convenience store transactions occur. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These unusual spikes in both transaction numbers and dollar volume do not appear in the

transaction count and dollar volume averages for other like type stores. These large dollar value 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 minimal stock of staple foods and the lack of any specialty, bulk, or ethnic foods that might sell for large dollar amounts and therefore also considered this to be a strong indication of trafficking. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends the Appellant firm is located in a low income neighborhood with a high concentration of refugees from Eastern Europe. The average family consists of 5-8 children, inclusive of extended families. The firm is the only convenience store within a 2-3 mile radius and a lot of customers use SNAP to buy their groceries from the store. The firm's business model is based on catering to international foods consumers and this accounts for the more expensive and specialized products that cannot be purchased elsewhere. The firm also sells high volumes of meats (entire animals in a single transaction) and vegetables that are purchased in high frequency. The firm is fully stocked with EBT eligible items and shopping buckets are provided for large transactions. Appellant submitted, three statements by individuals claiming to shop at the firm, invoices for inventory purchases, a listing of mark-ups for 36 items, photos of EBT products, and copies of tax returns in support of these contentions.

Regarding Appellant's contentions, it is readily apparent from the FNS store visit report and photos that the description of the Appellant firm carrying expensive international foods and selling high volumes of meat and vegetables is not at all accurate. The store visit report completed in collaboration with one of the store owners also makes no mention of buckets being provided to customers making large purchases. It is more likely that these descriptions belong to another store being represented by counsel and were mistakenly included as an inadvertent administrative oversight. The number of other larger SNAP retailers within a one mile radius has been previously addressed and will not be repeated.

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 the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value 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 April 16, 2018, shows that the Appellant firm offers a very 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, condiments, drinks, and single serving foods as well as many ineligible items. The fact that alcohol, tobacco, tobacco accessories, lottery, household products, paper products, pet products, auto products, health and beauty items, ATM, clothing, hats, purses, diapers, lighter

fluid, charcoal, candles, money orders, and party supplies 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 has a very small checkout area and no shopping carts thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived.

A detailed analysis of the invoices submitted for inventory purchases was conducted by the Retailer Operations Division and the dollar amount of eligible food purchases compared to SNAP redemptions at the firm for the period October-December 2017 using a 43 percent markup based on the markup listing provided. This analysis proves the firm was not purchasing expensive international foods or high volumes of meats. It also shows that while the available eligible food stock was sufficient to account for SNAP redemptions

5 U.S.C. § 552 (b)(6) & (b)(7)(C) during this period, the remaining monthly balances were insufficient to account for any significant dollar amount of non-SNAP purchases.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's request for administrative review states that SNAP sales account for only 5.0 percent of the firm's gross sales.

Appellant's photos do not provide any valid basis for dismissing the charges or for mitigating the penalty as they support the FNS store visit report and photos showing that the firm has a very minimal stock of staple food items and sells a large quantity and variety of accessory foods such as drinks, snacks, and candy. The tax returns also provide no relevant evidence related to the suspicious transactions at the Appellant firm. The three customer statements are without merit as none of them make any mention of having received credit, of conducting multiple transactions in unusually short time frames, or of conducting high dollar value transactions at the Appellant firm. Furthermore, only one of the households had transactions that were included in the charge letter Attachments. This household was the one used as an example in the previous section concerning multiple transactions and exhibited shopping patterns indicative of trafficking.

It is further noted that SNAP redemptions at the firm fluctuated unusually following receipt of the charge letter on May 10, 2018. The average SNAP transaction dollar amount decreased 40.25 percent from April 2018 to May 2018. The volume of SNAP redemptions at the Appellant firm decreased 29.00 percent during the same period while the number of SNAP transactions increased 18.77 percent from April 2018 to May 2018. A pronounced fluctuation in SNAP redemptions following the store visit is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts. The significant increase in SNAP transactions is likely an attempt to further mask trafficking transactions.

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 allowed credit accounts, a violation of SNAP regulations at Section 278.2(f), because the owners were not aware of this prohibition when the transactions took place.

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 owners are accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. When the owners signed the certification page of the SNAP retailer application to begin operating as a SNAP retailer, they confirmed they understood and agreed to abide by program rules and regulatory provisions. They agreed to accept responsibility for SNAP 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 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. Despite agreeing to abide by SNAP rules and regulations, ownership now admits that the firm allowed credit accounts, a clear violation of SNAP regulations and rules. Additionally, the SNAP Retailer Training Guide and the training video, provided to all retailers upon initial authorization, are also available on the FNS retailer web site that contains the online SNAP retailer applications. Both the guide and video cite credit accounts as violating SNAP regulations. Had store ownership read the SNAP training materials provided by FNS or trained store personnel using these materials within 30 days of SNAP retailer authorization, as required, it is inconceivable that they could not have been aware that credit accounts violated SNAP regulations.

The owner'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.

Appellant was unable to provide any 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.

Other Contentions

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. A record of participation in SNAP with no previously documented instance of violations or 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 or for mitigating the impact of those charges.

The owners 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 in the charge letter Attachments. 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.

SNAP regulations are explicit in what constitutes substantial evidence. Specifically, 7 CFR § 278.6(i)(2) states in relevant part, “As specified in Criterion 3 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider written and dated statements of firm policy which reflect a commitment to ensure that the firm is operated in a manner consistent with part 278 of current FNS regulations and current FSP policy on the proper acceptance and handling of food coupons.” This section goes on to state, “As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation.” This section further states, “A firm which seeks a civil money penalty in lieu of permanent disqualification shall document its training activity by submitting to FNS its dated training curricula and records of dates training sessions were conducted...”

Appellant submitted undated Certificates of Completion for SNAP training for two of the owners for the years 2014-2018, a photo showing the cover of the FNS Training Guide for Retailers along with other indistinguishable papers, an unsigned/undated affidavit by one of the owners describing the firm’s training program, and an unsigned/undated affidavit by an unnamed store employee confirming the training program in support of the CMP. Appellant did not submit a copy of the firm’s SNAP compliance policy and program or any dated training curricula and records of training sessions. The fact that the Appellant firm did not open until March 17, 2015, and was not authorized as a SNAP retailer until November 19, 2015, supports that the SNAP training certificates that included the year 2014 were fabricated after the fact in an attempt to qualify for a trafficking CMP. This, combined with statements by store ownership that no other employees besides two of the owners worked in the store, confirms that the store owners were involved in trafficking and therefore would not be eligible for a trafficking CMP.

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

November 9, 2018