

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

Sister Food Market,

Appellant,

v.

Case Number: C0201683

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

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

ISSUE

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

AUTHORITY

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

In a letter dated September 7, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of February 2017 through July 2017. The letter noted that the penalty for

trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The Appellant received the charge letter via UPS on September 8, 2017. The Appellant responded to the charges in a faxed document sent on September 15, 2017. The Appellant generally stated that the irregular transaction patterns were due to SNAP customer shopping habits which the store could not control. The Appellant also stated that the store was located in a high crime area and that the store was the nicest and cleanest in the area among other contentions. The Appellant did not request a trafficking CMP under 7 CFR § 278.6(i).

After considering the Appellant's response and the evidence in the case, the Retailer Operations Division issued a determination letter dated September 20, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked September 21, 2017, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is covered in the Food & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021, and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i)

establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, *in part*:

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, *in part*:

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

7 CFR § 271.2 states, *in part*:

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

7 CFR § 278.6(a) states, *in part*:

*FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, **evidence obtained through a transaction report under an electronic benefit transfer system....** [Emphasis added.]*

7 CFR § 278.6(i) states, *in part*:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

7 CFR § 278.6(b)(2) states, *in part*:

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

(iii) If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty. [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from February 2017 through July 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 237 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 2:** Multiple purchase transactions were made too rapidly to be credible. This attachment lists 15 pairs of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 3:** Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists 34 sets of 82 transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 4:** In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- **Charge Letter Attachment 5:** Excessively large purchase transactions were made from recipient accounts. This attachment lists 110 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
5 U.S.C. § 552 (b)(6) & (b)(7)(C).

APPELLANT'S CONTENTIONS

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

- The store has never had any violations of the SNAP or WIC Program.
- The irregular transactions are due to normal customer shopping patterns for a store located in a high crime area.
- The store cannot control how SNAP recipients use their SNAP benefits.
- Something is wrong with the transaction data
5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store has specials with chips at two (2) or three (3) for a dollar, sandwiches at \$3.00 or \$3.50, and drinks at 50 cents.
- The store is the nicest and cleanest small market in the eastside of Chester, Pennsylvania. The nearest supermarket is 1.2 miles away.
- The store has had an increase in SNAP redemptions because it remodeled and added specials for sandwiches and hoagies with soda.
- When compared to other stores, Sister Food Mart does not have large SNAP redemptions.
- Store expenses have exceeded SNAP redemptions for the review period of March 2017 through July 2017.
- The Appellant has provided its SNAP purchase invoices to show that it has sufficient food to support its SNAP redemptions.
- A permanent disqualification would be a disservice to the community as Sister Food Market is a clean and respectable establishment.

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

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Sister Food Market for the SNAP on October 24, 2006. During the review period of February 2017 through July 2017, the Retailer Operations Division classified Sister Food Market as a medium grocery store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 8, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Sister Food Market is approximately 2,000 square feet in size and operates out of a corner store front in an urban area.
- The store had no shopping carts and only 12 small handheld baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store had no optical scanners or conveyor belts at the checkout.
- There was a small storage area of 200 square feet outside of public view in a storage area. No food was stored offsite.
- There were no large bulk foods, international or specialty foods that might sell for a high price. There were no fresh meat/seafood bundles or large boxes of fresh fruit and vegetables for sale. The most expensive food item was infant formula.
- The store prices generally ended in typical retailer amounts **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. There was no evidence of a special pricing policy and the store did not round down or up at checkout.
- The checkout area consisted of a small window and countertop, approximately two (2) feet x three (3) feet, surrounded by plastic shelving containing candy and gum. There was a large reach-in cooler to the left of the checkout counter. As a result of the limited space at and near the checkout area, it was not conducive to conducting large transactions.

The inventory of food items at the time of the store visit was typical of a medium grocery store with a moderate selection of staple food stock. The SNAP eligible food stocked by the store was generally of a low dollar value consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. The most expensive items were infant formula priced at \$30.99, \$18.19, and \$17.89 and a 24- pack of soda at \$11.49. Although the store sold infant formula, the store has also participated in the WIC Program since 2007 and these items are more likely to be purchased with WIC benefits than SNAP benefits.

Accessory food items included, but were not limited to: coffee, tea, carbonated and non- carbonated drinks, condiments, and spices. The stocked ineligible items included tobacco products, health and beauty products, paper goods, household cleaning products, and general houseware. The store also had a deli and kitchen

and sold SNAP ineligible hot and cold prepared foods (including made-to-order sandwiches and prepared salads) not intended for home preparation and consumption.

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

Same Cent Transactions

During the review period, Sister Food Market conducted 1,589 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

The Appellant states that something is wrong with the transaction data 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This highlights the irregular nature of this transaction pattern which is present in other months of the review period.

The Appellant noted that it sold chips at two (2) or three (3) for a dollar, sandwiches at \$3.00 or \$3.50, and drinks at 50 cents. The sale of these items might explain some of the smaller transactions, but it is unlikely to explain the larger transactions cited in the charge letter. There is no evidence that the store had a special pricing policy that would cause a disproportionate number of high dollar transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A review of the store visit pictures show that the price labels at the store end in typical retailer pricing amounts for food such as 49, 79 and 99 cents. Based on the store visit report, the Appellant's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. It is implausible that several of these relatively inexpensive items purchased together would disproportionally result in total purchase prices 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Instead when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a more random statistical spread of ending cent 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter

Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions made too Rapidly to be Credible

Charge Letter Attachment 2 lists 15 pairs of transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The second transaction in each set was a large dollar transaction which greatly exceeded the average transaction at a medium grocery store in Pennsylvania. Rapid and consecutive transactions conducted at a store without the technology and infrastructure to process such transactions are a trafficking indicator.

The average SNAP transaction for a medium grocery store in Pennsylvania during the review period was \$19.78. However, all of the rapid transaction pairs at Sister Food Market had a second high dollar transaction amount **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated. As the checkout and counter space is very limited, it is unlikely that the store could process such large food purchases. The fact that the store did not have an optical scanner or calculator would increase the amount of time it would take to check-out as prices would have to be determined for the merchandise and then entered in the register before the item could be bagged.

Despite the store's limitations in counter space and infrastructure, it was rapidly processing consecutive SNAP transactions which included a least one excessively large transaction atypical of a SNAP medium grocery store in Pennsylvania. The Appellant offered no credible explanation as to how it could conduct such transactions. Based on a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Multiple Transactions by the Same Household within a Short Time Period

The Appellant states that it is aware of no limits on the number of purchases that can be made with SNAP benefits and that it cannot control how SNAP recipients choose to shop. It is true that SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they

display characteristics of use inconsistent with the nature and extent of a medium grocery store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure. Charge Letter Attachment 3 lists 34 sets of 82 transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is not credible that a medium grocery store with a moderate selection of staple foods would have suspicious SNAP transactions greatly exceeding the average SNAP transaction of a superstore or supermarket in Pennsylvania. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items for sale. In addition, the store's small checkout window and limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts for transporting food within the store. Based on the analysis above, and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Exhaustion of Benefits

Charge Letter Attachment 4 lists 18 sets of 24 transactions

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

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

A government report on SNAP shopping patterns¹ indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to

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

deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in a single day at one store. Depleting one's entire allotment in a single day, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

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

Excessively Large Transactions

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

The Appellant also states that compared to other stores, Sister Food Market does not have large SNAP redemptions. This claim is not supported by the evidence. Charge Letter Attachment 5 cites 110 SNAP transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).**

5 U.S.C. § 552 (b)(7)(E). The substantial number of high dollar purchases atypical of a SNAP authorized medium grocery store calls into question the legitimacy of these transactions. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant states that the store has had an increase in SNAP redemptions because it remodeled and added specials for sandwiches and hoagies with soda. The Appellant submitted no evidence of any remodeling or when it may have occurred. In addition, the sandwich and soda specials would likely be SNAP ineligible cold prepared food not intended for home preparation and consumption. Lastly, even if the Appellant's contentions are true, it would be very unlikely to explain the excessively large transactions cited in the charge letter which exceed the average transaction for a supermarket or superstore in Pennsylvania.

The Appellant states that the store is the nicest and cleanest small market in the eastside of Chester, Pennsylvania and that the nearest supermarket is 1.2 miles away. The Appellant submitted no evidence to show it is “the nicest and cleanest” small market in the area and such a claim would be difficult to prove. It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of other SNAP authorized stores in the area.

However, agency data systems document that within a one-mile radius of Sister Food Market there are 20 SNAP authorized stores including two (2) superstores. A government report on SNAP benefit redemption patterns² revealed that households most often redeemed their benefits at supermarkets and superstores with only four (4) percent of all households never shopping in a supermarket or superstore. Thus, when a supermarket or superstore is available, it is highly unlikely that a SNAP recipient would conduct excessively large SNAP transactions at a medium grocery store with a moderate selection of staple foods like Sister Food Market.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three (3) households identified in the charge letter to analyze their shopping patterns at Sister Food Market compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and/or superstores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Sister Food Market often on the same day, or within a few days of, shopping at supermarkets and superstores. It is highly unlikely that a medium grocery store with only a limited to moderate selection of staple foods would have legitimate SNAP transactions comparable or greater than these larger and better stocked supermarkets and superstores.

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

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

SNAP Redemptions and Purchase Invoices

The Appellant states that the store expenses have exceeded its SNAP redemptions during the review period. This may or may not be true, but it is not relevant and does not explain the irregular SNAP transactions cited in the charge letter.

The Appellant provided copies of its purported purchase orders to support its contention that it had sufficient food inventory to support its SNAP redemption. The case record shows that the Retailer Operations Division carefully reviewed and analyzed this documentation. The Retailer Operations Division only excluded those purchase orders and receipts which were outside the review period, were illegible or did not contain any food items. **5 U.S.C. § 552 (b)(7)(E)**. Thus, SNAP and WIC redemptions combined exceeded the store's estimated retail food sales during the review period. This does not even take into account that the store likely had cash and credit card sales of food. Therefore, the preponderance of the evidence shows that the store likely had insufficient food inventory to support its SNAP redemptions during the review period.

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

No Prior Violations

The Appellant states that the store has never had any violations of the SNAP or WIC Program. With regard to this contention, a record of participation in the SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Trafficking in SNAP benefits is an extremely serious violation and both 7 U.S.C. § 2021(b)(3)(B) and 7 CFR § 278.6(e)(1)(i) state that a first time violation warrants a permanent disqualification.

Hardship to SNAP Customers

The Appellant claims that a permanent disqualification would be a disservice to the community as Sister Food Market is a clean and respectable establishment. Regarding this contention, there is no provision in SNAP law or regulations that would negate, waive or reduce a permanent disqualification for trafficking due to a purported hardship to SNAP customers. Where there is a hardship to SNAP households due to a lack of authorized stores in the area, FNS may impose a hardship CMP on a firm in lieu of a less than permanent disqualification.

However, the regulations at 7 CFR § 278.6(f)(1) clearly state that “a civil money penalty for hardship to [SNAP] households may not be imposed in lieu of a **permanent** disqualification.” [Emphasis added.] Because the Retailer Operations Division has taken action to permanently disqualify the Appellant firm, a hardship CMP in lieu of disqualification cannot be granted.

It should also be noted that there are 20 SNAP authorized stores located within a one-mile radius of the Appellant store including two (2) superstores. Therefore, it is unlikely that the local SNAP community will suffer a hardship as opposed to a mere inconvenience due to the permanent disqualification of Sister Food Market.

CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) even though it was informed of the right to do so in the charge letter. Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i).

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

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

RIGHTS AND REMEDIES

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

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

RONALD C. GWINN
Administrative Review Officer

February 5, 2018