

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

Starawad Enterprise Inc,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0217101

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 Starawad Enterprise Inc. (hereinafter referred to as “Starawad” or “Appellant”) 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 Starawad.

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 May 22, 2019, 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 October 2018 through March 2019. 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 charge letter was delivered via UPS on May 24, 2019.

The owner submitted a written response (received on May 31, 2019, but dated June 2, 2019) which stated, among other contentions, that New Mexico did not have a state tax; that homeless individuals shop in the store multiple times a day; and that a new manager has been stocking the store with products based on customer demands. An e-mail, dated May 31, 2019, requesting an extension of time to reply was sent by a third party named 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The Retailer Operations Division sent that person two e-mails requesting a signed owner authorization if they were going to represent the owner, but such authorization was never received. Nevertheless, the store was granted additional time to reply. An additional written response with non-itemized receipts and store photos was received by the Retailer Operations Division on June 12, 2019.

After considering the evidence in the case and the Appellant's contentions, the Retailer Operations Division issued a determination letter dated August 8, 2019. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 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 7 CFR § 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 dated and postmarked August 19, 2019, the Appellant, through counsel, requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted. The Appellant also requested information under the Freedom of Information Act (FOIA) and an official FOIA response was issued by the agency on November 20, 2019. The Appellant was then given the opportunity to submit additional evidence in support of its administrative review which it did in a brief dated December 30, 2019.

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 § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

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 defines trafficking, in part, as:

The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone

7 CFR § 271.2 defines eligible food, in part, as:

Any food or food product intended for human consumption except alcoholic beverages, tobacco, and hot foods 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 October 2018 through March 2019. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were a large number of transactions ending in a same cents value. This attachment lists 417 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** that ended exactly in 00 cents. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**
- **Charge Letter Attachment 2:** Multiple transactions were made from the accounts of individual SNAP households within a set time period. This attachment lists 31 sets of 72 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- **Charge Letter Attachment 3:** The store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock. This attachment lists 267 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, through counsel, made the following summarized contentions in its request for administrative review, in relevant part:

- The Appellant store operates as a large convenience store, approximately 2,500 square feet in size, and would more likely be categorized as a small grocery. The store stocks a variety of staple food items, including canned and packaged goods, deli meats and cheeses, bread, pasta, eggs, dairy items, fresh produce and frozen foods.
- The store is the only retail store in the surrounding area that provides the community with such an expansive and diverse selection of grocery products. The new store manager permits store personnel to take requests for specific food items which are then ordered to the store which has resulted in an increase in sales.

- Some of the store's SNAP customers spending habits became erratic during the 2019 government shutdown (December 22, 2018 through January 25, 2019) as the state issued February SNAP benefits early.
- The store visit showed that the store is sufficiently stocked in all four (4) staple food categories and is sufficiently provisioned to explain the transaction amounts listed in the charge letter.
- The agency's ALERT system is over utilized by the USDA. The ALERT system fails to account for special business practices, differences in demographics, foodstuff and geographic areas.
- The Retailer Operation Division's decision was influenced by confirmation bias. Ambiguous or contradictory evidence has been disregarded or interpreted in such a way that unreasonably favors the hypothesis that trafficking is occurring at the Appellant store.
- Not all of the transactions listed in the charge letter are those of the store as the terminal IDs have not been verified or otherwise accurately reflected in the charges.
- The transactions listed in Charge Letter Attachment 1 are all the result of store selling most products at prices ending in 00 cents. In addition, New Mexico does not place a tax on food items. Therefore, nearly every item in the store is priced to have a high likelihood of resulting in even dollar, 00 cent transactions. This is reflected in the store's register receipts. FNS has no evidence to refute the Appellant's position regarding the store pricing. Some of the dates on the receipts have the wrong year because of issues with power losses in the store where the registers were not properly reprogrammed by staff.
- The transactions listed in Charge Letter Attachment 2 are all the result of the store's business practices, co-shopping, and/or the habits of the SNAP clientele. In New Mexico, SNAP participant household benefits are issued between the 1st through the 20th day of the month so multiple purchases within the first 48 hours are not unusual. These transactions are reasonably explained by co-shopping where both adult household members of an average household are responsible for shopping. The transactions are also explained by a participant forgetting an item in a prior transaction or the customer making a purchase, returning home and then returning to make a second purchase.
- The transactions listed in Charge Letter Attachments 3 are all the result of the store's inventory, co-shopping, and/or normal SNAP customer shopping habits. It is also common for customers to spend larger amounts at the store due to the lack of nearby alternate SNAP retailers and the lack of personal transportation for many SNAP clientele. Many of these transactions also took place during the government shutdown as a result SNAP customers purchased larger quantities of groceries than perhaps they normally would at the store.
- There is no evidence that a proper store comparison was made by the Retailer Operations Division. The only reasonable conclusion is that the store's transactions were in line with the transactions at the comparison stores.
- In the alternative, the Appellant requests that the store be considered for a CMP under 7 CFR § 278.6(i).

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 Starawad for the SNAP on April 9, 2018. At authorization and during the review period of October 2018 through March 2019, the Retailer Operations Division classified the store as a convenience store. This classification was based on reported sales and observed store inventory.

The store owner signed the SNAP application for the store on March 9, 2018 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits as repayment on credit accounts or in exchange for ineligible items.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during an April 15, 2019 store visit conducted by an FNS contractor to observe the nature and scope of the store’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:

- Starawad is approximately 2,500 square feet in size. Exterior signage identifies the store name as “5 U.S.C. § 552 (b)(6) & (b)(7)(C).” Store personnel stated that the store name is “5 U.S.C. § 552 (b)(6) & (b)(7)(C).”
- The store had only one (1) shopping cart and four (4) handheld shopping baskets. However, the store pictures showed that the shopping cart and baskets were all located in a storage/utility/cleaning room that was inaccessible to store customers. The cart and baskets appeared to be in use by the store for storage, supplies or trash and were apparently not for customer use.
- The store had one (1) cash register and one (1) point-of-sale (POS) device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- No food was kept in a storage area either offsite or outside of public view.
- The store had a long row of empty and/or broken coolers.
- The store did not have a special price structure such as ending most product prices at even dollar amounts. Food items generally had prices ending in nine (9) cent amounts which is typical for retail food stores. Store personnel stated that they did not round prices down or up at checkout.

- The store did not offer specials or sales of expensive items such as fresh meat bundles, fresh seafood specials, and/or fresh fruit and vegetable boxes. The store did not carry any international or specialty food items.
- Store personnel stated that the store did not take telephone orders, online orders, or any other type of orders.
- The checkout area consisted of a small counter space adjacent to plastic shelving and wood shelving containing incense, small water pipes, lighters, and other non-food items. The available open space for stacking food to be purchased was no more than two (2) feet by two (feet) at best. There were also reach-in coolers (only partially filled with single-serving ice cream and Popsicle products) in front of the checkout area which further restricted space for checking out. This limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted almost exclusively of inexpensive canned and packaged goods typical of a convenience store along with a limited selection of fresh produce. The store also sold inexpensive accessory food items such as snack foods, ice cream, potato chips, candy, carbonated sodas, coffee, tea, condiments, and spices. The ineligible items for sale included lottery, tobacco products, automotive products, health and beauty aids, paper goods, clothing, cleaning products and general household goods.

According to store personnel, the most expensive food items sold by the store were a 70 ounce package of Yummy Dino Buddy chicken nuggets at \$19.99 (only one stocking unit for purchase); a 36.8 ounce can of Maxwell House coffee at \$9.99 (more than 10 stocking units); a 20 ounce package of Kroger Crunch shrimp at \$8.99 (only one stocking unit for purchase); and a 105 ounce jar of French's Classic yellow mustard at \$6.99 (only one stocking unit for purchase).

The Appellant states that the store visit showed that Starawad is sufficiently stocked in all four (4) staple food categories to justify the transactions cited in the charge letter. It is true that the store visit report shows that Starawad has sufficient stock **to be eligible for SNAP authorization under Criterion A**; however, 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 offering similar food items.

ALERT System

The Appellant makes multiple contentions regarding the limitations of the ALERT system and states it is relied upon too heavily by the agency. With regard to these contentions, it should be noted that the ALERT system is a computerized fraud detection tool to identify SNAP transactions that form patterns having characteristics indicative of trafficking. However, this tool does **not** by itself determine or conclude that trafficking has occurred. The Retailer Operations Division must still conduct an extensive analysis of the transaction data and patterns, often with other factors such as, in this case, observations from store visits, an analysis of customer shopping behavior, local conditions, and a comparison of similar stores in the area using transaction data from the same review period, and render a determination whether the questionable transactions were, more likely than not, the result of trafficking. In addition, the

Appellant is always given a chance to explain the specific transaction patterns before the determination letter is issued.

The legality of this methodology is supported by 7 CFR § 278.6(a) which 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.]

The Appellant further claims that the Retailer Operations Division was influenced by confirmation bias; however, this is mere speculation on the Appellant’s part and there is no evidence in the case record that would support this assumption.

Court Cases

The Appellant further cites some case law which it claims supports its position on the ALERT system and on other contentions made in the administrative review. Although the Appellant may disagree, considerations of legal precedent through case law, or the lack thereof in relation to the present case, is beyond the scope of this review. Instead this administrative review is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008, as amended, and the regulations promulgated under the Act, and whether the action taken is sustainable by a preponderance of the evidence. Therefore, any application of a supposed judicial precedent would best be addressed in a judicial review in a court of law. Accordingly, no further findings or conclusions are rendered in this regard.

Store Terminals and Terminal Verification

The Appellant states that the store visit report conducted on April 15, 2019 recorded that the store had only one POS device in use at the store; however, the charge letter identified three (3) different terminals associated with the irregular transactions. Therefore, the Appellant concludes that not all of the transactions listed in the charge letter are those of the Appellant store as the terminal IDs have not been verified or otherwise accurately reflected in the charges.

The Appellant’s contention here is without merit. Three (3) different terminals were used by the store to run transactions during the review period, but only a single terminal was used at one time. The first terminal was used to run transactions from October 1, 2018 (the beginning of the review period) to January 9, 2019. The second terminal was used to run transactions from January 9, 2019 to February 12, 2019. The third terminal (presumably the one identified during the store visit report) was used from February 12, 2019 to the end of the review period. All three (3) terminals are positively identified in the case record as belonging to the store located at **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, owner **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Same Cent Transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)

Despite the Appellant's contention, there was no evidence that the store had a special pricing policy that would cause a disproportionate number of higher dollar transactions to end in 00 cents. In fact, during the store visit, store personnel specifically were asked and stated that the store did not round prices up or down. The Appellant says that New Mexico does not have a tax on food; however, this is not relevant as taxes may not be charged on food purchased with SNAP benefits anyway.

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 disproportionately result in total purchase prices ending in 00 cents. Instead when SNAP customers buy multiple food items, resulting in higher dollar amounts, the total transaction amount is more likely to result in a random statistical spread of ending cent ranges from 00 to 99 cents.

Consequently, when there are a disproportional amount of high dollar 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 by the Same Household within a Set Time Period

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 this convenience store's stock and facilities and are thus indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)

The Appellant contends that the transactions listed in Charge Letter Attachment 2 are all the result of co-shopping, food orders, store inventory and/or the normal shopping habits of the SNAP clientele. Regarding the Appellant's "co-shopping" contention, while different household members can use the EBT card, it is unlikely they would conduct multiple irregular large dollar transactions in such a short period of time at a convenience store that does not offer a great variety and quantity of staple foods. Even if repeated "co-shopping" trips were made by different household members this does not explain the multiple high dollar transactions conducted in a short period of time as cited in Charge Letter Attachment 2. Even the smallest transactions in each set had an amount which were generally two (2) to three (3) times higher than the average purchase amount for a SNAP convenience store in New Mexico. Also, if co-shopping is causing these type of patterns one would expect those patterns to be repeated at nearby competitor stores

that offer a similar amount and quantity of staple and accessory food. However, none of these stores exhibited the same irregular transaction patterns that occurred at Starawad.

The Appellant states that shoppers may forget to purchase an item and make another transaction or they may come back to finish their order. It is true that sometimes a customer will forget an item or two and come back later to make an additional small dollar purchase. However, the transactions cited in the charge largely consisted of second or subsequent transactions which greatly exceeded the average transaction of a Bernalillo County convenience store during the review period.

The Appellant notes that New Mexico SNAP benefits are issued on the 1st through the 20th day of the month. It is true that SNAP recipients tend to conduct transactions earlier in the month when benefits first became available, but this is true at all stores and does not explain why Starawad exhibits the irregular transaction patterns described in Charge Letter Attachment 2 as compared to other convenience stores in the area that sell similar food items.

In conclusion, 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. In addition, the store's small checkout area and extremely limited counter space makes it unsuitable for conducting large transactions. The store also had only a single shopping cart and four (4) hand held baskets for transporting food within the store and these may not have even been available for customer use based on the store visit report. 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.

Excessively Large Transactions

SNAP 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 this convenience store's stock and facilities and are thus indicative of trafficking.

5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(7)(E)

The Appellant contends that the transactions listed in Charge Letter Attachment 3 are all the result of either co-shopping, store inventory, and/or normal SNAP customer shopping habits. Again, the Appellant does not explain how co-shopping leads to excessively large transactions atypical of a convenience store in New Mexico. If co-shopping or these other conditions explained this pattern, then this pattern would also be replicated at other convenience stores located in the same area as Starawad.

The Appellant references a USDA study that states that SNAP participants tend to buy sweetened beverages, frozen prepared foods and prepared desserts at a much higher rate than traditional consumers. These items are carried by Starawad; however, it should be noted that these inventory items are relatively inexpensive purchases as compared to other foods such as

fresh meat, poultry, fish, or international or specialty foods none of which Starawad carried. These more expensive food items are carried at supermarkets and superstores. Yet, Starawad had average transactions cited in the charge letter which are greater than those of a New Mexico supermarket or superstore. SNAP purchases of snack food, soda, flavored drinks and candy may be typical of a convenience store; yet, the irregular transaction patterns cited in Charge Letter Attachment 3 are not typical of a convenience store in New Mexico.

The Appellant states that the government shutdown and early issuance of February 2019 SNAP benefits may explain the large transactions cited in the charge letter. However, this would still not explain the store having large dollar transactions greater than that of a supermarket or superstore. If the Appellant's arguments were valid, these irregular patterns would also be present at nearby competitor stores offering similar food items and they are not. In addition, any increase in the average size of SNAP transactions due to the early issuance of benefits would be reflected in the average transactions by store type that were used during the review period.

The Appellant states that the Retailer Operations Division cannot present evidence as to the inventory of other stores that are similarly situated because there are none. However, a document in the case file shows that the Retailer Operations Division identified a convenience store located within 0.56 miles of approximately the same size and infrastructure along with a very similar food inventory. Although this comparison store was similarly situated, and would have been subject to the same local shopping conditions and factors as Starawad, it did not exhibit the same irregular transaction patterns as Starawad.

Sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area. However, agency mapping systems shows that, during the review period, there were 15 SNAP authorized stores located within a mile radius of Starawad. These included nine (9) other convenience stores, three (3) small grocery stores, two (2) medium grocery stores and a superstore. Therefore, a lack of access to SNAP authorized stores does not appear to explain the Appellant store's excessively large transaction patterns.

A government report¹ on SNAP benefit redemption patterns 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 convenience store with a limited selection of staple foods like Starawad. The Appellant states that based on a Food Marketing Institute study, in 2016, consumer's shopping habits trended towards an increase in the use of convenience stores, small grocers, and ethnic food stores. That may be true, however, FNS' year-end study for 2016 documented that more than 80 percent of SNAP dollars were still spent at supermarkets and superstores with only 1.42 percent of all SNAP dollars spent at convenience stores. This again indicates that when a supermarket or superstore is available it is highly unlikely that a convenience store would have transactions greater than a supermarket or superstore.

¹ "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program," report prepared by Mathematica Policy Research for the Food and Nutrition Service, February 2011.

The case record also documents that the Retailer Operations Division conducted a detailed analysis of seven (7) households identified in the charge letter to analyze their shopping patterns at Starawad 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 Starawad on the same day or within a few days of shopping at these larger supermarkets and superstores. Under these circumstances, it is highly unlikely that a convenience store with a more limited selection of staple foods would have legitimate SNAP transactions comparable or larger than these SNAP authorized 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 limited availability of counter space for checking out and the lack of shopping carts and baskets support the Retailer Operations Division determination. 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 3 are more likely than not the result of trafficking in SNAP benefits.

CIVIL MONEY PENALTY

The Appellant now requests, in the alternative, that it be assessed a trafficking CMP. However, the Appellant did not request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR § 278.6(i) within ten (10) days of the charge letter even though it was informed of the right to do so in the charge letter. The SNAP regulation at 7 CFR § 278.6(b)(2)(ii) mandates that a request for a trafficking CMP along with supporting documentation shall be submitted within ten (10) days of receipt of the charge letter.

The SNAP regulation at 7 CFR § 278.6(b)(2)(iii) also states, in part, that "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** ... the firm **shall not be eligible** for such a penalty." [Emphasis added.]

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 in comparison with actual store circumstances 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. Stores caught in trafficking violations consistently display particular, characteristic patterns of transactions, including 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 Starawad Enterprise Inc., 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

January 15, 2020