

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

**STG Spanish American Grocery,**

**Appellant,**

**V.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0223486**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), finds there is sufficient evidence to support the determination by the Retailer Operations Division (Retailer Operations) to impose a permanent disqualification of STG Spanish American Grocery (Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against Appellant.

**AUTHORITY**

7 U.S.C. § 2023, and 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**

Appellant was initially authorized to participate in SNAP on January 5, 2005. In a letter dated December 13, 2019, Retailer Operations charged Appellant with trafficking, as defined in § 271.2 of SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of April 2019 through September 2019, and information obtained during a store visit by an FNS contractor on October 14, 2019. The attachments enclosed with

the Charge Letter specify the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant during the review period. This letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). This letter also stated that Appellant may request a Civil Money Penalty (CMP) in lieu of permanent disqualification within 10 days of receipt of the Charge Letter, under the conditions specified in 7 CFR § 278.6(i).

Appellant provided a Letter of Representation dated December 20, 2019, and submitted a response to the trafficking charges by correspondence dated December 26, 2019. After considering Appellant's reply and further analyzing the evidence in the case, Retailer Operations concluded that trafficking had occurred as charged and issued a Determination Letter dated January 23, 2020. This letter informed Appellant that it would be permanently disqualified from SNAP upon receipt of the letter, in accordance with 7 CFR § 278.6(c) and (e)(1). The letter also stated that Appellant was not eligible for a trafficking CMP in accordance with § 278.6(i) because it failed to submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

By correspondence dated January 29, 2020, Appellant, through counsel, appealed Retailer Operations' determination and requested an administrative review. Appellant's owner submitted correspondence dated February 3, 2020, and 89 invoices were submitted as evidence of store inventory. The appeal was granted by letter dated February 7, 2020.

### **STANDARD OF REVIEW**

In an appeal of an adverse action, such as disqualification from SNAP participation, Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means Appellant has the burden of providing relevant evidence which 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 7 CFR § 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 in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 U.S.C. § 2021(b)(3)(B) reads, 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(a) reads, in part: FNS may disqualify any authorized retail food store or authorized wholesale food concern from further participation in the program 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 EBT system. Disqualification shall be for a period of 6 months to 5 years for the firm's first sanction; for a period of 12 months to 10 years for a firm's second sanction; and disqualification shall be permanent for a disqualification based on paragraph (e)(1) of this section.

7 CFR § 278.6(b)(2)(ii) reads, in part: Firms that request consideration of a CMP 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 CMP 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).

7 CFR § 278.6(b)(2)(iii) reads: If a firm fails to request consideration for a CMP 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.

7 CFR § 278.6(e)(1)(i) reads: FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2. Trafficking is defined in part as, the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits for cash or consideration other than eligible food. Trafficking includes intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

7 CFR § 278.6(f)(1) reads, in part: A CMP for hardship to SNAP Households (HHs) may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) reads, in part: FNS may impose a CMP 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.

## **SUMMARY OF CHARGES**

Appellant was charged with trafficking and subsequently permanently disqualified from participating in SNAP based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as EBT transaction data from April 2019 through September 2019. Government analyses has found that transactions involving trafficking consistently display particular characteristics or patterns. In this case, the Charge Letter Attachments reflected the following SNAP transaction patterns which commonly indicate trafficking:

- Charge Letter Attachment 1: There were a large number of transactions in repeated dollar values; and
- Charge Letter Attachment 2: Multiple transactions were made from the accounts of individual SNAP HHs within a set time period; and
- Charge Letter Attachment 3: EBT transactions that are large based on the observed store characteristics and recorded food stock.

### APPELLANT'S CONTENTIONS

In response to the Charge Letter and in its request for administrative review, Appellant presented the following contentions:

- Appellant is a family-run business, owned and operated for 14 years.
- Appellant's average inventory of just food/grocery items **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Appellant's average mark-up of 66%, for items sold, is typical for this store type. There is approximately 1,000 sf of display area which includes a 9', 7', and 5' long refrigerator; three 12'x5' freestanding shelves of grocery items; numerous smaller shelves for snack items; a 6' long ice cream freezer box; a 4'x3' candy display, and one check-out counter. There are up to four store workers at any one time – 1 behind the counter, 2 stock people, and 1 helper.
- Appellant is located in a densely populated, poor section of Hartford, CT. All of the housing within walking vicinity of Appellant are low-income, apartment communities. Many, if not most, of the people in the area do not have cars and most receive SNAP benefits. Appellant brings in many customers who are unable or unwilling to do their grocery shopping at the bigger box stores that are miles away. The nearest grocery store to Appellant requires this population to walk over 20 minutes from their apartments. The nearest major supermarkets are located miles away.
- The questioned sales are very common for Appellant's customers who purchase similar, if not exact, items each month given its convenient location to the surrounding neighborhood.
- Appellant is a grocery store that provides a large selection of products with a limited choice of brands. Appellant provides shopping baskets for its customers and it is not unusual for customers to buy larger quantities at a time. Many shop at the beginning of the month when their SNAP benefits arrive, shop weekly and/or monthly, and exhaust their SNAP benefits within the day of receipt which shows larger dollar values per month.
- Appellant is unaware of any regulation prohibiting SNAP customers from shopping twice **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This would be difficult policing such a requirement, as there is no way of knowing whether a customer has been in within the past day.
- Appellant welcomes an on-site audit of its transactions, believes the Attachments are not statistically significant, and claims better evidence should be presented before the draconian step of permanent disqualification is imposed.
- A permanent disqualification would disappoint, inconvenience, and adversely affect the entire neighborhood and surrounding area. SNAP customers would be unable to make a

quick trip to their local store to purchase needed food items, parents would be unable to send their older kids to pick up a quick item needed to make meals and healthy snacks for school; force customers to use small convenience stores for their groceries which do not have a large or proper selection of healthy and/or nutritional foods or beverages; support major corporations and discriminate against small, locally owned neighborhood stores; devastate a family-run business that enjoys supporting its local community of which they have formed lasting relationships with; dramatically reduce gross receipts, potentially causing it to close and greatly affect the family financially, as its only source of income.

- Any misuse of SNAP is nonexistent at Appellant. They have prevented misuse of SNAP in the past. Customers ask to purchase 4 or 5 cases of Red Bull or 5 or 6 cans of baby formula and these transactions have been declined once they know the payment method is food stamps, because they believe these items will be sold in exchange for cash. They also decline customers attempting to use their food stamps to pay for a food item from a cash-customer and then keep the cash for themselves.
- The family-run business takes the allegations very seriously. The family is completely shocked, distraught, and somewhat blindsided that USDA believes trafficking is occurring. They are willing to take full responsibility to make sure no actual trafficking is occurring, ensure they prevent any trafficking from ever happening, and will keep a much more watchful eye on the purchases. They have agreed to make Appellant their point of contact if they notice any suspicious activity or purchases so they can be dealt with before they occur; this will assure that a second set of eyes can determine if there is any wrongdoing and be able to stop it before it occurs. They have also agreed that if any of them ever suspect an attempt at SNAP abuse or wrongdoing, they will not accept SNAP benefits from that customer. They will never give the customer the benefit of doubt or accept SNAP benefits unless they are 100% certain that there is no wrongdoing and it has been approved by the owner first. They believe this extra layer of protection will provide the assurances that no wrongdoing is occurring when dealing with SNAP benefits. They appreciate USDA's concern for the alleged actions/purchases they found and assure USDA that they have made the above changes to help prevent anything from happening further.
- Appellant's family requests reconsideration and promises to continue to work with honesty and integrity, follow all SNAP laws, and be more vigilant of suspicious and unnecessary purchases in order to prevent the misuse of SNAP. They propose USDA consider a period of suspension, followed by probation of not less than one year, while allowing Appellant to accept SNAP benefits. After successful completion of probation, USDA puts Appellant back in good standing. They have already implemented and will continue to follow the new compliance policy and are willing to include, implement and/or restructure any further policies or procedures that USDA deems pertinent. They are willing to do whatever USDA requires of them in order to be able to continue properly serving the community they love.

In addition to these contentions, Appellant, through counsel, submitted the following:

- Exhibit 1 – Google Maps showing the low-income housing communities in proximity to Appellant

- Exhibit 2 – Google Maps showing walking/driving distance and time from low-income housing to Appellant and nearest grocery store.
- Exhibit 3 – 2018 Tax Form (1040 Schedule C)
- Exhibit 4 – Markup percentages to be used for 2018, NACS SOI Annual Report 2016 Data
- 17 store photos
- 89 invoices of store inventory

The preceding may represent only a brief summary of Appellant’s contentions and evidence submitted. However, in reaching a decision, full attention was given to all contentions and evidence presented, including any not specifically summarized or explicitly referenced herein.

## **ANALYSIS AND FINDINGS**

This review examines the relevant information regarding the trafficking determination. Once a trafficking determination is made based upon EBT data and information obtained during a store visit, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained. Without supporting evidence and rationale, assertions that Appellant has not violated program rules do not constitute valid grounds for overturning the determination.

### **Store Visit Report**

The case file indicates that in reaching a disqualification determination, Retailer Operations considered not only Appellant’s EBT transactions, but also information obtained from a store visit conducted by an FNS contractor on October 14, 2019, to observe the nature and scope of Appellant’s operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for Appellant’s irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 850 square feet in size;
- Approximately 100 square feet of storage, out of public view; with non-staple foods;
- No food regularly sold stored at other locations;
- No storage coolers or freezers.
- One cash register, one EBT point-of-sale (POS) device, and one optical scanner for ringing-up SNAP transactions;
- One checkout counter area with limited check-out counter space;
- No shopping carts and eight hand-held shopping baskets available for customer use;
- Does not primarily sell one food type such as meat, poultry, dairy, seafood, fruits, baked goods, or vegetables;

- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, or grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- No special pricing structure, such as most product prices ending in \$.00;
- No transaction totals are rounded up or down at the checkout counter;
- No telephone or online orders are taken;
- No delivery is offered;
- Kitchen/food preparation area;
- No hot food is sold;
- Food is sold for on-site consumption; microwaves/heating sources
- Deli and prepared food section with prices posted for Meats/Cheeses and Prepared/Made-to-Order Sandwiches;
- Store stock being used in the deli-prepared food section;
- The four most expensive (costing \$5.00 and above) SNAP eligible food items in stock were: 12.4 oz Similac priced at \$18.99; 16 oz Queso de Papa priced at \$6.99; 16 oz Kraft Cheese priced at \$6.99; and 5 lbs Goya Medium Grain Rice priced at \$5.99;
- Ineligible nonfood items included lottery tickets, tobacco products, alcohol, automobile products, health and beauty aids, paper goods, and cleaning products.

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

### **SNAP Transaction Analysis**

Charge Letter Attachment 1: Large number of transactions in repeated dollar values. This Attachment lists 31 sets of 230 transactions with repeated dollar values **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Based on the store visit report and photographs, Appellant did not appear to have packaged items that would result in the same six repeated dollar values by random customers. As such, it is implausible that 230 transactions resulted in the same six dollar amounts by different customers. The occurrence of these repeated transactions is greater than the National and/or State expected average of transaction frequency for the dollar amounts and suggests trafficking as the most likely explanation.

Appellant contends the questioned sales are very common for its customers who purchase similar, if not exact, items each month given its convenient location to the surrounding neighborhood. While some of the transactions in this Attachment may have been for legitimate staple food purchases, there is insufficient evidence that these repeating dollar value transactions are legitimate. When many transactions end in a repeated dollar value, it appears that these transaction amounts are contrived and therefore, in the absence of compelling evidence, i.e. cash

register receipts, are indicative of trafficking. As such, the transactions in this Attachment have not been adequately documented as legitimate.

Charge Letter Attachment 2: Multiple transactions were made from the accounts of individual SNAP HHs within a set time period. This Attachment lists 48 individual transactions in 22 sets of two or more transactions, conducted by 21 different SNAP HHs, within a set time period. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. Violating stores often conduct multiple transactions from the same HH within a set time period to avoid the detection of single high-dollar individual transactions.

Appellant is unaware of any regulation prohibiting SNAP customers from shopping twice **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and it would be difficult policing such a requirement, as there is no way of knowing whether a customer has been in within the past day.

SNAP regulation does not prohibit recipients from making multiple transactions during a single day. However, the transactions cited in this Attachment are questionable not because they exceed any limit for use, but because they display characteristics consistent with trafficking. It is highly likely that Appellant would conduct multiple transactions from the same HH account as an approach to avoid the detection of a single high dollar transaction.

It is certainly not unusual for a small number of SNAP HHs to conduct multiple transactions within a short time period. However, occurrences of two to three large transactions indicate that these transaction do not reflect the additional purchase of forgotten items. 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 average small grocery store SNAP transaction amount in Hartford County, Connecticut during the review period was \$9.87. 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 small grocery stores further supporting that trafficking was occurring at Appellant during the review period.

Charge Letter Attachment 3: EBT Transactions that are large based on the observed store characteristics and recorded food stock. This Attachment lists 601 transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store's observed characteristics and recorded food stock. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

Based on the store visit report and photographs, the large transaction amounts are not consistent with Appellant's inventory of moderate to low priced foods. Appellant does not offer food in bulk or any ethnic or specialty foods that sell for a high price. There is no evidence of a wholesale business, price advantage, or special services rendered that are not offered at other authorized SNAP stores in the area. Appellant has limited fresh produce and no fresh meat. The store layout is not conducive to large transactions. The checkout area has limited counter space with a slanted display case in front of it. It would also be difficult for customers to carry the amounts in this Attachment in shopping baskets.



The average transaction amount included in this Attachment **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The large transactions included in this Attachment are not consistent with a small grocery store in Hartford County, Connecticut. During the review period, the average transaction amount for a small grocery store in Hartford County was \$9.87. The average transaction amount in this Attachment is more than five times larger than the average purchase amount for this store type. There is no evidence that Appellant would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with Appellant store's inventory. Many of Appellant's food products consisted of accessory food items such as snack foods, candy, and drinks and inexpensive staple foods such as canned and packaged goods.

While Appellant may be located in a neighborhood with HHs that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. Appellant shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific HH needs are causing these questionable transactions at Appellant, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

Appellant, through counsel, contends that the nearest SNAP authorized store is located a significant distance from Appellant and many, if not most, of the people in the area do not have cars. It is true that 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, the case record shows that Retailer Operations determined through agency mapping systems that there are 21 SNAP-authorized stores within a 2-mile radius of Appellant, including 9 small grocery stores, 7 medium grocery stores, 1 large grocery store, 3 supermarkets, and 1 super store. This confirms SNAP HHs do have access to comparable or larger stores that sell a variety of staple food items at comparable or better prices as compared to Appellant.

ALERT data confirms 52% of the HHs in the Charge Letter conducted transactions outside of a 2-mile radius, which shows that most HHs do have access to superior options and do not, in fact, spend their entire benefits at Appellant. Retailer Operations also conducted an analysis of the shopping habits of three of the HHs identified in this Attachment. This analysis concluded that not only do these HHs live 2-15 miles from Appellant, but they are bypassing larger stores in closer proximity, that are better stocked and offer better prices. These are strong trafficking indicators.

Appellant, through counsel, contends that the questionable transactions are only 37% of its total sales, large transactions are common for those doing weekly and or monthly shopping, many come to the store at the beginning of the month when the benefits are loaded, many exhaust their SNAP benefits within day of receipt, a large selection of products but limited brands are offered, shopping baskets are provided, and it is convenient for customers who are unwilling or unable to shop at larger stores miles away. Appellant submitted 89 invoices in support of its food inventory.

It is unusual for customers to buy larger quantities at a time and it is not normal for many to exhaust SNAP benefits within day of receipt in this type of store. USDA's Office of Research and Analysis released a report in 2011 stating, "On average, HHs have less than one-quarter of their benefits left by the middle of the month; however, most HHs make relatively small purchases (5 U.S.C. § 552 (b)(6) & (b)(7)(C) on average) with SNAP benefits each month." However, the study also states that "Purchases are typically small. The average purchase amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C)."

The 89 invoices submitted for the months of June 2019 and August 2019 were analyzed with all other information available to FNS. Having sufficient inventory to cover the redemptions does not imply or determine that Appellant purchased sufficient inventory to cover their total eligible food sales during the review period as cash, checks, credit card, or debit card sales are not considered in the invoices provided. FNS does not contend that the store does not have stock; however, the transactions are still unusual and absent any compelling evidence, the transactions are evidence of trafficking.

FNS has access to Appellant's SNAP redemptions. ALERT is designed to flag transactions deemed unusual based on specified parameters. For this reason, all transactions in the Charge Letter are statistically relevant. The case record notes that the Charge Letter was delivered on December 16, 2019. In January 2020 the flags dropped by more than 50% and redemptions dropped by more than 30%. Such a large drop indicates that trafficking was most likely occurring.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, 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. In this case, ownership did not provide itemized cash register tapes for the review months. No pricing information was advanced. No detailed listing of eligible foods sold was advanced. No recipient affidavits were offered in evidence as to shopping behaviors at the firm. Thus, the owner has not provided a preponderance of evidence that the transactions in the Attachment are for eligible foods rather than the result of trafficking.

### **Hardship to Appellant and Community**

Appellant contends permanent disqualification would disappoint, inconvenience, and adversely affect the entire neighborhood and surrounding area. SNAP customers would be unable to make a quick trip to their local store to purchase needed food items, parents would be unable to send their older kids to pick up a quick item needed to make meals and healthy snacks for school; customers would be forced to use small convenience stores for their groceries which do not have a large or proper selection of healthy and/or nutritional foods or beverages; support major corporations and discriminate against small, locally owned neighborhood stores; devastate a family-run business that enjoys supporting its local community of which they have formed lasting relationships with; dramatically reduce gross receipts, potentially causing it to close and greatly affect the family financially, as its only source of income.

Appellant's owner and family contend they have prevented misuse of SNAP in the past, take allegations very seriously, and have made changes to help prevent anything from happening further. They request reconsideration and propose USDA consider a period of suspension, followed by probation of not less than one year, while allowing Appellant to accept SNAP benefits. After successful completion of probation, USDA puts Appellant back in good standing. They have already implemented and will continue to follow the new compliance policy and are willing to include, implement and/or restructure any further policies or procedures that USDA deems pertinent. They are willing to do whatever USDA requires of them in order to be able to continue properly serving the community they love.

With regard to the contention that the store may have to close, Federal statute at 7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP; however, there is no provision in the statute or regulations for a waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty. Likewise, there is no permitted waiver or reduction of an administrative penalty for trafficking due to hardship to the community served by the store.

### **Summary**

It is the finding of this review that the attachments furnished with the Charge Letter adequately identify irregular patterns of SNAP transactions, thereby indicating that trafficking was likely taking place. The transactions listed in the Charge Letter are highly unusual and substantially different from comparable stores in the area. Based on these and other factors, such as the store's physical characteristics and inventory, the case for trafficking is convincing.

Upon review, Appellant failed to prove, by a preponderance of the evidence, that the administrative action should be reversed. Appellant has not offered sufficient and compelling evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the Charge Letter were not caused by trafficking. In fact, Appellant offered little reliable evidence to support its contentions regarding specific transactions listed in the Charge Letter. This is wholly insufficient to warrant reversal of the agency's permanent disqualification determination. In the absence of reasonable evidence from Appellant, it is the conclusion of this review that the transactions listed in the Charge Letter Attachments were, more likely than not, the result of trafficking violations committed by Appellant.

### **CIVIL MONEY PENALTY (CMP)**

The case record shows Appellant was notified that it had 10 calendar days upon receipt of the Charge Letter to provide required documentation in order to be considered for a trafficking CMP. Retailer Operations determined that Appellant was not eligible for a CMP in lieu of permanent disqualification for trafficking, because it did not request a trafficking CMP when it

replied to the Charge Letter or submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and training program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP to be considered, Appellant must request a CMP in lieu of permanent disqualification and submit sufficient evidence within designated timeframes. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations.

Based on the discussion above and the evidence under review, Retailer Operations' decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR § 278.6(i) as Appellant failed to meet the regulatory requirements for a trafficking CMP.

### **CONCLUSION**

Retailer Operations' analysis of the EBT transaction record for Appellant was the primary basis for its determination to permanently disqualify the retailer. This review finds this data provides substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Store visit photographs and documentation further support the trafficking determination. Appellant has not proven, by a preponderance of evidence, that the administrative action should be modified or reversed.

Based on a review of all of the information available in this case, the determination by Retailer Operations to impose a permanent disqualification against STG Spanish American Grocery, under the ownership **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained.

### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this Decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. 2023) and in SNAP regulations at 7 CFR § 279.7. 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 Appellant's owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a Complaint is filed, it must be filed within 30 days of receipt of this Decision. Please note that the judicial filing timeframe is specified in the Act, and this office is unable to grant an extension.

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.

Kim Dameron  
Administrative Review Officer

February 12, 2021