

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

Stop Buy #1,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0214165

FINAL AGENCY DECISION

It is the decision of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) that the preponderance of the evidence supports that Stop Buy #1, (Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support that the permanent disqualification of Appellant from participation as an authorized retail food store in the program, as imposed by the Retailer Operations Division, (Retailer Operations) was appropriate.

ISSUE

The issue accepted for review is whether Retailer Operations took appropriate action, consistent with 7 CFR § 278.6(a), (c), and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant.

AUTHORITY

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

CASE CHRONOLOGY

By Charge letter dated January 30, 2019, Retailer Operations notified the owner that USDA had compiled evidence that Appellant had violated the SNAP regulations. The analysis of Appellant's electronic benefit transaction (EBT) records established clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity. Based on this information, Appellant was

charged with trafficking as defined in Section 271.2 of the regulations. The sanction for trafficking is permanent disqualification.

The owner replied to the Charge letter with an email dated February 11, 2019, and provided copies of receipts. Upon request by Retailer Operations, on March 4 and 5, 2019, the owner provided additional information.

Retailer Operations issued a Determination letter dated March 19, 2019. This letter advised the owner that Appellant was permanently disqualified as a SNAP retail food store in accordance with Sections 278.6(c) and 278.6(e)(1) of the regulations. Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to Section 278.6(i) of the regulations, and deemed it was not eligible because insufficient evidence was submitted to demonstrate that Appellant had established and implemented an effective SNAP compliance policy and program to prevent violations.

By letter dated March 27, 2019, counsel requested review of the determination, and made a FOIA request. The request for appeal was granted by letter dated March 29, 2019. The agency FOIA reply letter to counsel was dated May 21, 2019. Counsel provided additional information to this office by cover letter dated June 13, 2019. This office provided the additional information to Retailer Operations for consideration on June 13, 2019. Retailer Operations provided its assessment to this office on July 1, 2019.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Sections 278.6(a) and (e)(1) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(e)(1) states: "FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as "the buying or selling of SNAP benefits for cash or consideration other than eligible food."

7 CFR § 271.2 states: “Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food products prepared for immediate consumption.”

7 CFR § 278.6(a) states: “FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system.”

7 CFR § 278.6(b)(2)(ii) states: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).”

7 CFR § 278.6(i) states: “FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.”

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions identified in the Charge letter Attachments, were the result of trafficking. The charges on review were based on an analysis of SNAP EBT data during the period of May 2018 through October 2018. This involved two patterns of EBT transaction characteristics that are indicative of trafficking:

1. Multiple transactions made from individual benefit accounts within a set time period.
2. Excessively large purchase transactions made from recipient accounts.

APPELLANT’S CONTENTIONS

In reaching a decision consideration has been given to all contentions presented, including any not specifically referenced here.

- We are submitting POS tickets attached that are in support of our sales. Attached are the copies of POS invoices as per the Attachment 1 and 2.
- We are an ethnic grocery store essentially selling halal staple food, including lamb, goat, beef and chicken. Needless to say, meat is an expensive product and generates larger tickets.
- Stop Buy denies any trafficking of SNAP benefits occurred at the Store and submits that the transactions on the attachments do not constitute “unusual, irregular, and inexplicable” EBT transaction activity, and are not evidence of trafficking.

- The Charge Letter is not based upon any direct evidence that trafficking took place at the Store. It is founded upon circumstantial evidence from FNS's Anti-Fraud Locator using EBT Retailer Transactions (ALERT) system. That the system may flag patterns of allegedly suspicious transactions does not support a determination that the Store engaged in trafficking absent additional investigation.
- The ALERT system is replete with bias and is not subject to proper statistical and other controls.
- A Final Agency Decision against Stop Buy that affirms its permanent disqualification from SNAP pursuant to the ALERT system, and without supporting direct evidence is arbitrary and capricious.
- FNS has declined to produce a complete copy of the entire unredacted investigatory record. Failure to provide the complete administrative record when the store is faced with permanent disqualification violates the due process clause of the U.S. Constitution. FNS's administrative process is not a level playing field. It requires retailers to seek judicial review to obtain the complete administrative record. It is fundamentally inequitable and an abuse of delegated authority by Congress.

The owner initially provided copies of 207 itemized customer receipts. Upon request by Retailer Operations, he later provided vendor invoices and store photographs.

For review, new information in support of the owner's position may be advanced. Counsel provided a six page cover letter, and Exhibits A and B: copies of USDA communications, Exhibit C: counsel's FOIA request, and copy of the owner's letter of representation, Exhibit D: an owner declaration with ten statements, Exhibit E: a redacted copy of the USDA Case Analysis, Exhibit F: copies of 207 cash receipts, the same receipts previously provided by the owner, and Exhibit G: copies of vendor invoices. The owner had previously provided original vendor invoices.

ANALYSIS AND FINDINGS

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the Charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking that were conducted at Appellant during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Itemized Receipts: The owner provided copies of 207 cash register/POS receipts.

Contentions:

- The Store provides detailed receipts to its customers and maintains electronic copies of all receipts. The Store's receipts list each product that was purchased, the price, the date and time, and other pertinent information.
- Stop Buy maintains records of all transactions, EBT and otherwise, for not less than one year. Stop Buy purchased software which enabled it to download all 207 SNAP transactions referenced in the attachments from its server.

- Each receipt contains a list of each item purchased by the SNAP beneficiary, the price of each, the total for the transaction, the date, the time, the EBT balance remaining, and other information.
- The register receipts conclusively demonstrate that each SNAP transaction listed on Attachments 1 and 2 to the Charge Letter were legitimate EBT transactions involving only the purchase of eligible food items and were not instances of trafficking.
- It is difficult to imagine what additional information a retailer could possibly provide to support the legitimacy of transactions that took place months earlier.

The record shows that Retailer Operations analyzed the receipts presented, and identified irregularities in pricing, product labeling, formatting, spelling, margin spacing, dates, and math errors. Retailer Operations resolved that given the variations, irregularities, and inconsistencies it identified with the receipts, the copies established no baseline legitimacy for the transactions listed on the Charge letter Attachments. Retailer Operations concluded that the receipts were fabricated in an attempt to explain the charges.

Retailer Operations noted that no proof of a software purchase to download the receipts was submitted. Thus, this represents an unverifiable and anecdotal contention. Retailer Operations found that the submitted receipts did not appear to be photocopies of original receipts, or to be generated from a POS system on register paper, but appear to have been created in a Word document, and likely not downloaded from Appellant’s server.

Credible itemized cash register receipts are a persuasive form of proof to substantiate that the transactions listed on the Charge letter Attachments are legitimate. In order for the receipts to be accepted as viable proof of legitimate transactions for eligible food, the receipts themselves have to be genuine. In this case, based on the irregularities it identified, Retailer Operations did not accept the evidence as credible.

Examples of some of the many irregularities noted by Retailer Operations follow.

Receipt for transaction #60

Receipt for transaction #138

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

This single October 5 U.S.C. § 552 (b)(6) & (b)(7)(C), transaction is flagged on Attachment 1 as number 60, and Attachment 2 as number 138. The owner labeled the receipt on the left as #60, and the one on the right as #138. A receipt for one transaction cited on two Attachments should be identical. Yet, there are variations in pricing, a math error, and formatting inconsistencies. The price of the items are different even though they are for the same transaction, which undermines the veracity of the receipts. The foods listed on receipt #138 do not total 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the transaction amount listed on the Charge letter. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Retailer Operations noted that this shows that the receipts were fabricated in an attempt to match the Charge letter transaction data, and confirms that they were not legitimate. Retailer Operations also remarked that the truncated EBT card number is shown on the receipt on the left but not in the one on the right.

Receipt for transaction #95

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

Receipt for transaction #109

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

The above receipts are for transactions 95 and 109 on Attachment 2, that according to EBT data, were swiped 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and conducted by two different households. The receipt for transaction #109 contains date inconsistencies, and formatting irregularities (i.e. line to the left of the item numbers). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The EBT card number line is present on the receipt for transaction #95, but receipt #109 shows no EBT truncated number. Variations such as these are an indicator of fabrication. On review, it could be that the bottom part of receipt #109 is for transaction #196, but the total amount error, and the receipt as presented, appears to be tampered with. As such, a claim that the data was downloaded from a server is suspect.

The owner claimed that the receipts showed the EBT balances remaining, however this is not the case. Many receipts, such as numbers 1 through 6, have no information about EBT balances. Receipts #25 and #190 show “EBT Food Balance: 5 U.S.C. § 552 (b)(6) & (b)(7)(C),” when in effect, Retailer Operations determined that benefit balances 5 U.S.C. § 552 (b)(6) & (b)(7)(C), were available to these households. Additionally, receipts #17, #28, and #74 each list a “Custom Item” which cannot be identified as a food item.

Receipt #55, dated June 2, 2018, shows the “Cashier” as the store name. The four items listed total 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and there is no price listed for one chicken boneless “brest” [sic]. Receipt #88, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), shows the “Cashier” as “Slop Buy.” The total of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) shown on the receipt, is the same amount as on the Attachment, but the items listed actually total 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Retailer Operations noted that many receipts show repeated high dollar amounts transacted for 24 pack Arizona Iced tea and Arizona Tea 24 pk. While these are eligible items, Retailer Operations found this peculiar, and surmised that these items were probably input to cover trafficking transactions. For example, transactions #3 and #4, by the same household, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for 5 packages of tea. The receipt #62 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for iced tea 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is suspicious.

Receipts #11/#193 and #12/#103, transacted 5 U.S.C. § 552 (b)(6) & (b)(7)(C), show that the same household transacted three identical items on each receipt, with receipt #12 having more units, plus two additional items. One receipt shows wintermint gum, while the other shows mint gum. Receipts for transactions #12 and #103 should be identical, as this is one transaction listed on two Attachments. While the amounts are the same, there is a spacing/line break variation in the two receipts. This is unusual.

The owner submitted the 207 receipts to Retailer Operations in response to the Charge letter. Retailer Operations determined that Appellant was trafficking. Counsel submitted the same 207 receipts for administrative review that were previously submitted by the owner to Retailer Operations. In appeal of a sanction, Appellant may present new information to support its

position. Appellant has the burden of providing relevant, credible evidence to support a conclusion that the argument asserted is more likely to be true than not true.

The receipts, as initially submitted, were again advanced as conclusive evidence of legitimate SNAP transactions. Upon further review of the resubmitted receipts, Retailer Operations found additional irregularities and inconsistencies, that supported its initial finding that the receipts were fabricated. Since permanent disqualification is warranted on the first occasion of trafficking, an owner who seeks to set aside an agency sanction must focus his probative efforts on providing clear credible evidence by a preponderance that the transaction activity at issue is in fact not due to SNAP benefit trafficking. This burden has not been met.

Attachment 1: Listed are 70 transactions in 30 data sets of two or more transactions conducted by 20 different households (HHs). Multiple transactions made from individual benefit accounts in set time frames are indicative of trafficking.

Contentions:

- Attachment 1 detailed 70 transactions consisting of 30 sets of transactions from the same SNAP household “within a set time period.” 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- SNAP transactions from the same household 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at the same store is hardly indicative of trafficking. To the contrary, that merely illustrates that the SNAP beneficiary shops at that store with frequency. Neither the Charge Letter nor the Case Analysis contains any personal identifying information regarding the SNAP beneficiary.
- If FNS interviewed those SNAP beneficiaries about these transactions, the agency would learn that each and every transaction was a legitimate one involving the purchase of eligible food items set forth on the corresponding receipt attached as Exhibit F.
- While SNAP transactions 5 U.S.C. § 552 (b)(7)(E) might be deemed unusual, there are numerous reasonable explanations for why a beneficiary may shop at the same store multiple times in close temporal proximity. They include forgotten items and because multiple individuals residing in the same household may use the same EBT card to pay for different items collected in separate baskets or shopping cards [sic].
- Only five pairs of transactions (Numbers 1-2, 3-4, 5-6, 7-8, and 9-10) are 5 U.S.C. § 552 (b)(7)(E) minutes apart. Review of the first ten pages of Exhibit E reveals what those SNAP beneficiaries purchased.
- Although it is not known to the Store why they used their EBT card in close temporal proximity, Stop Buy may not ask its customer why they are doing so or refuse to process the SNAP transaction. Additionally, the second of each pair of transactions 1-2, 3-4, 7-8, and 9-10 involved only one or two items, which likely indicates that an item was forgotten, or the store was asked to ring them up separately. Transaction 6 only involved the sale of seven items.
- The cashiers can easily ring up only seven items using our optical scanner and can complete a SNAP transaction 5 U.S.C. § 552 (b)(7)(E).

Retailer Operations identified four traditional SNAP authorized stores located within one mile of the Appellant including: one medium grocery store, another small grocery, one supermarket, and one super store. All of the surrounding stores are located on the same main highway. Retailer

Operations noted there were sidewalks available for pedestrian use, as well as public transportation to these other retailers. Retailer Operations also determined that SNAP households shopping at Appellant were transacting benefits at supermarkets and super stores more than a mile distant from Appellant. The data shows that 40% of the HHs flagged on this Attachment, made a SNAP transaction(s) at a supermarket or super store within one day of making transactions at Appellant. As such, transportation to other SNAP authorized stores did not appear to be a constraint for some recipients with flagged transactions at Appellant.

Retailer Operations found it unlikely that 20 different households returned to Appellant 5 U.S.C. § 552 (b)(6) & (b)(7)(C) for legitimate high dollar food purchases. It is also unusual that a HH would buy multiple identical items 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As seen on receipts #67 and #69, this HH supposedly purchased 2 “Halal Chicken Tenderloin Fritters Box,” 1 Coke 12 pk, and 1 water 40 pk 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the HH again acquired another fritters box, 2 Coke 12 pk, and another large water pack. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Transaction #68 5 U.S.C. § 552 (b)(6) & (b)(7)(C), was conducted just 5 U.S.C. § 552 (b)(6) & (b)(7)(C) after #67, and was for six units of three items. Transaction #70 was just 5 U.S.C. § 552 (b)(6) & (b)(7)(C) after swipe #69. Had the eight items listed on #70 been added with the near-timed previous transaction, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Of the individual transactions flagged, 64% are for amounts that are more than the Fairfax County average SNAP transaction amount for a small grocery store, which was \$42.14 for the review period. Retailer Operations determined that the transactions in Attachment 1 do not contain the characteristics associated with a recipient purchasing a forgotten item right after checking-out, or households returning to purchase an item or two. In a portion of the flagged sets, the second transaction amount or combined subsequent transaction amounts, exceeded the initial transaction amount. Transaction patterns of this sort are often seen when violating retailers breaking up large, suspicious transactions into multiple, somewhat smaller transactions in order to avoid detection of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

In this matter, the owner stands by the regulatory provision that there is no minimum dollar amount per transaction, nor maximum limit of the number of transactions, and that he must provide for the equal treatment of SNAP households, and non-discrimination based on stated bases. As such, he offered no specific explanation for the listed data sets. The USDA, and the SNAP retailer training guide do encourage retailers to report the possible abuse of SNAP benefits to the Office of Inspector General, and it operates a hotline, website, and telephone numbers to capture such reports of those who may be, or are known to be, violating a Program rule.

The owner did not advance any recipient statements of HHs that frequented Appellant during the timeframe to support that recipients made legitimate food purchases at the store. While the households’ numbers are truncated on the Attachments, it is conceivable that the owner might have been able to deduce who some of these recipients were that made frequent, large dollar SNAP transactions at his small store. Counsel contends that if FNS had contacted the beneficiaries who made the transactions on Attachments, these individuals would attest that all of

their SNAP purchases were legitimate. If counsel believed such interviews would have provided probative evidence in Appellant's favor, counsel could have encouraged the owner to identify regular, EBT customers, and provide affidavits from these customers. It is Appellant that bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed.

Attachment 2: Listed are 137 individual EBT transactions conducted by 47 households that are for amounts that exceed the average transaction amount for the same store type in the same state by at least three times. The record shows that Appellant stocks halal meats, ethnic specialty foods, canned and packaged goods, frozen and refrigerated foods, snacks, and carbonated and noncarbonated drinks. SNAP ineligible items for sale included: lottery tickets, tobacco products, bongs, alcohol, charcoal, paper and Styrofoam products, health and beauty aids, cleaning products, and housewares.

The data shows that 62% of the households listed made a transaction(s) at an authorized supermarket or super store, within one day of conducting a transaction(s) at Appellant. Thus, the majority of recipients listed on the Attachment, did transact benefits at other larger store types. The data shows that Appellant's SNAP dollar volume amount **5 U.S.C. § 552 (b)(7)(E)** higher than the average SNAP small grocery volume amount in the state, and 60% higher than in Fairfax County. This is irregular.

Contentions:

- No FNS regulation, policy memorandum, or other issuance defines "large."
- On numerous occasions, Stop Buy's customers purchased substantial amounts of a wide variety of eligible food products, including halal meat. The Store is prohibited by FNS regulations from asking customers about their purchases, including why they are purchasing specific items or why they are redeeming a large amount of SNAP benefits. Stop Buy also may not refuse to sell any eligible food items to SNAP beneficiaries or otherwise discriminate against them for using EBT.
- In some instances, it appears that SNAP customers were conducting shopping at the Store that may more typically be done at supermarkets or superstores. Whether that is due to the Store's proximity to their homes or workplace, or whether it is because they are observant Muslims who eat only halal meat, is not known with certainty to the owner.
- The store is the only SNAP authorized seller of halal meats in the area. There is one halal foods retailer about four miles to the north, that carries a smaller selection of halal meats at higher prices than Stop Buy. There is no halal butcher for many miles to the south. There is no other halal retailer to the south that is east of I-95 for a considerable distance.
- The reason why a SNAP beneficiary shops at a particular store is beyond the scope of the Store's knowledge and not a relevant factor in the instant analysis.
- Although that amount is more than 50% greater than the average dollar value of SNAP redemptions at other small grocery stores in Fairfax County during the Review Period, that amount is not surprising, suspicious, unusual, irregular, or unexpected considering the type of eligible food products that Stop Buy carries, that meat is usually more expensive than other eligible food items and halal meat is more expensive than other meat, and there is a lack of halal butchers in the vicinity.

- The Store is also located within a mile of Mount Vernon, the home of President George Washington. Thousands of commuters and local residents pass by the Store on a daily basis.
- Unlike most small grocery stores, Stop Buy carries a wide selection of halal meats. It is also the only SNAP authorized retailer that carries halal meat in the vicinity. The closest authorized store that carries halal meats appears to be nearly four mile to the north, and carries a small selection of halal meats at higher prices.
- Stop Buy’s purchase invoices demonstrate that it purchases and sells a substantial volume of eligible food items. These invoices show that the cost of goods sold greatly exceed the Store’s volume of SNAP transactions and strongly supports the legitimacy of all SNAP transactions listed in the attachments to the Charge Letter. Without question, Stop Buy’s purchase receipts show far greater purchases than sales, including EBT transactions.

The owner, upon request of Retailer Operations, initially provided original vendor invoices. Exhibit G includes copies of invoices to document inventory, that are the same as the original invoice submission. It should be noted that 19 invoices, such as some from Restaurant Depot, were dated outside of the the review period. Some invoices did did not pertain to the assessment, as they were not for food, such as the Costco Executive Business Membership renewal. These invoices were not tallied by Retailer Operations to assess eligible inventory at Appellant. Non-food items listed on the receipts were also not counted as eligible foods.

The record shows that Retailer Operations contacted the owner on March 5, 2019, to ask his markup on inventory. The record shows that the owner stated that depending on the item, the inventory markup 5 U.S.C. § 552 (b)(7)(E) Retailer Operations applied a 64% markup to eligible food items documented as purchased during the review months. This percentage is derived from a 2014 industry annual report by the National Association of Small Grocery Stores. Retailer Operations applied 20% of sales to cash, debit, and credit payments; non-SNAP benefit sales. Counsel stated that approximately 27% of Appellant’s eligible food sales are EBT transactions.

Analyzing the six months of the review period, Retailer Operations determined that the store’s invoices were not adequate to cover its SNAP redemptions for each of the six months. Eligible food invoices, with the applied markup, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Halal meat was seen on some of the Restaurant Depot invoices, however halal products did not appear to be acquired in large amounts by the store. There were some prepared poultry products seen such as, chicken nuggets and cooked chicken wings, on the Crystal Foods, Inc. vendor receipts. Retailer Operations found it notable that the invoices did not document large quantities of Arizona Iced Tea purchases. Overall, the presented invoices were short of covering the total SNAP redemptions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). After assessment of all the vendor invoices, Retailer Operations determined that they were not sufficient to explain the questionable transactions at Appellant.

The owner declared that he did not receive receipts for all purchases, especially those paid for in cash. He claimed that the cost of goods sold “greatly exceed our volume of SNAP transactions and supports the legitimacy of the SNAP transactions listed in the attachments.” As the owner did not have at his disposal all invoices to demonstrate that Appellant had in inventory eligible

foods to cover its SNAP redemptions, he might have provided additional evidence to support his claims for this review, such as credible, relevant federal business tax submissions, state sales tax submissions, and business banking statements. As noted, it is Appellant's burden to provide credible evidence in support of its case.

The large dollar transactions remain questionable since the store visit indicated there were no shopping carts, and only a small number of hand baskets to assemble large dollar amounts of foods. The cash register/POS receipts advanced show that recipients were routinely buying many units of 24 pack Arizona Iced teas and 28 pack Gatorade. The advanced receipts show that 24 pack Arizona Iced teas and 28 Pack Gatorade, totaling to large dollar amounts, were often purchased in quantities of three or more. These beverage packs are heavy, and would likely require shopping carts, that were not present at Appellant, or repeated trips to the checkout area. Retailer Operations found it unusual that so many beneficiaries would routinely purchase multiple cases of Arizona Iced teas and Gatorade at a small grocery store that did not provide any clear price advantage, or a convenient way to transport the items within the store, or to a vehicle. After review of the presented documentation, Retailer Operations was not convinced that the high dollar purchases were legitimate transactions for eligible foods.

Retailer Operations used an onsite store visit conducted September 17, 2018, to assess the likely validity of Appellant's transactions. The visit photos did not support that the store sold large quantities of halal lamb, goat, beef and chicken, as claimed by the owner. A photo shows some unlabeled, unidentified meat in a few black plastic bags, in a reach-in freezer, along with bags of ice, and some prepared boxed frozen foods. Under the meat, fish, poultry, staple food category, the 2018 onsite inventory report listed just eight pounds of beef-beef/veal, and 16 units of eggs-chicken eggs. A prior FNS store visit on February 25, 2017, did show that Appellant stocked meat items. Retailer Operations concluded that the 2018 photos show that a wall was constructed in front of the area where the meat was previously sold, rendering that the area no longer accessible to customers, and that the meat pricing seen in the 2017 photos, was no longer visible in the 2018 photos.

Retailer Operations ordered a new store visit of Appellant on February 12, 2019. Retailer Operations also contacted the retailer on February 13, 2019, to request invoices and photos of the store. Prior to this request for more documentation, the owner had only submitted the cash register receipts in response to the Charge letter. Another FNS store visit was conducted on March 4, 2019. Meat hanging in a cooler, and pricing of meat products on store signage appear in these photos.

The owner submitted the requested store photos on March 5, 2019. Retailer Operations determined that the photographs supplied by the retailer were generally consistent with the photographs taken by the FNS contractor. The retailer's photos show a better a stock of meat hanging in the walk-in cooler. Retailer Operations decided that while some transactions on the Attachments may have been for eligible foods, there was nevertheless, insufficient evidence that the firm would be likely to have SNAP redemption patterns that differed significantly from nearby, similar store type competitors.

It seems unlikely that the store's location in relation to Mount Vernon, the home of President George Washington, a tourist attraction, would influence SNAP redemption patterns at Appellant. The data supports that the HHs that made transactions at Appellant were primarily from Virginia. Furthermore, although thousands of commuters a day might pass by the shopping area where Appellant is located, one must consider that Appellant is set back at a considerable distance off the main road, Richmond Highway. Appellant is tucked into the corner of the shopping center, appears to be located in a darkened alley way, and the shopping outlets are fronted by parking lots. Given the photos in the record, the location of the store is unremarkable, the signage is average, and it is likely that recipients driving by would not even know that the store is there.

Counsel provided no demographic or descriptive information about the contended large residential neighborhood directly behind the store. Nor did he provide evidence to support there was a homeless shelter a distance south of the store which provided Appellant with a customers that were SNAP households. Also, it is unlikely that the homeless would acquire large quantities of meats or items in bulk unless said shelter provided storage and cooking facilities. The name of the halal store at a distance of about four miles was not stated. Therefore, it was not possible to determine if this store was authorized, or to conduct any data analysis of this unnamed store.

The regulations allow for disqualification of a retail food store on the basis of evidence that may include facts established through inconsistent redemption data and/or evidence obtained through a transaction report under an electronic benefit transfer system. Retailer Operations used patterns of transaction data, system reports, onsite store visit photos and reports, an analysis of household shopping histories, and other relevant assessments in rendering a finding that violations indicative of trafficking occurred at Appellant. These methods of analysis are as valid a means of establishing facts as is direct evidence obtained through an on-site investigation and the eye witnessing of trafficking.

Retailer Operations obtained shopping histories on multiple households identified in the Charge letter Attachments. The assessment of these HHs showed that these households also transacted benefits at supermarkets and super stores, sometimes on or about the same day they shopped at Appellant. One household studied by Retailer Operations, had a given address in the state administrative terminal, that was 15.5 miles away from Appellant. The HH by-passed larger store types to primarily transact its benefits at Appellant. It appeared suspicious to Retailer Operations that this HH would deplete almost its entire benefit allotment every time it conducted transactions at Appellant. Depleting a large portion of one's SNAP balance early in the benefit month, leaving little to no benefits to purchase foods for the remainder of the month, is inconsistent with the research findings on the shopping behavior of SNAP households.

Counsel claims that Appellant had consistent SNAP transactions during the review period, and prior to, and following receipt of the Charge letter. The data does not support this claim. Appellant's redemptions in November and December 2018, after the review period, were similar to redemption totals during each of the previous six months. However, Appellant's January 2019 redemptions were much higher at 5 U.S.C. § 552 (b)(6) & (b)(7)(C), a 5 U.S.C. § 552 (b)(7)(E) increase from October's SNAP redemption total. In fact, January 2019 marked the highest redemption total the store had on any month since it was authorized on 3/29/17, and began

redeeming in April 2017. The SNAP purchase transaction count also peaked to 483, the highest number the store had in all the time it was authorized. January saw a 76% increase in the number of SNAP transactions from the six review months' average number of SNAP transactions, which was 274. This is irregular.

Review of the record shows that the Charge letter was delivered to Appellant on January 31, 2019. The data confirms that Appellant's SNAP redemptions fell precipitously in February 2019 to 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with just 98 SNAP purchases. Appellant was disqualified by letter delivered March 20, 2019. March redemptions, which included the busiest early days of the redeeming month, totaled 5 U.S.C. § 552 (b)(6) & (b)(7)(C), with 179 SNAP purchases. Virginia issues benefits on the 1st to the 9th day of every month, based on the last digits of the client's case number. Nearby Maryland issues benefits from the 4th to the 23rd of every month, based on the first three letters of the client's last name.

This administrative review decision is limited to whether the Retailer Operations Division appropriately followed the Food and Nutrition Act of 2008 and the regulations promulgated under that Act. Retailer Operations used patterns of transaction data, other system reports, store visit observations and photographs, an analysis of households' shopping behavior, a review of the credibility and sufficiency of the advanced documentation by the retailer, including the resubmitted receipt and invoice evidence, and the owner's photos, and other analyses to determine that Appellant was trafficking. After review of the entire record, including the owner's declaration, and counsel's contentions, it is determined that Appellant's contentions and evidence did not outweigh by a preponderance, the evidence that Retailer Operations compiled.

The administrative review process does not include an assessment of the constitutionality of the laws, and regulations under which the agency imposed the adverse action, but rather whether the agency actions undertaken were proper pursuant to those laws and, regulations, and sustainable by a preponderance of evidence. As such, this office does not have the authority to assess whether the United States Congress, in its enactment of legislation, has conformed to Constitutional mandates. Additionally, challenges to the laws and regulations governing the SNAP are more appropriately the province of judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

CIVIL MONEY PENALTY

7 CFR § 278.6(i) specifies the criteria for a store's eligibility for a civil money penalty in lieu of permanent disqualification for trafficking. The criteria listed therein are, as a whole, specifically identified as a minimum standard that firms must meet in order to be eligible for such a penalty.

The owner did not provide substantial credible evidence that Appellant met all of the regulatory criteria for a trafficking CMP in lieu of permanent disqualification. Accordingly, Retailer Operations determined that Appellant did not qualify for a civil money penalty in lieu of a permanent disqualification.

CONCLUSION

Retailer Operations' analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. Appellant's data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. The record also includes suspicious household shopping patterns, onsite visit reports, store photographs, and other analysis.

The contentions offered by counsel to explain the transaction patterns, and the sworn statement by the owner, were not persuasive by a preponderance of the evidence as discussed herein. Retailer Operations advanced numerous examples of irregularities with the POS receipts, such that the credibility of this evidence was severely undermined. The invoices of eligible stock did not total to an amount that covered the SNAP redemption totals for the review months. The photos presented did show meats however, the photos were taken after the issuance of the Charge letter, and were deemed inconclusive as to eligible food inventory for the review period.

While the owner might have presented other evidence to support his case, no other evidence was advanced. Therefore, by a preponderance of evidence, a conclusion can be drawn, that the unusual, irregular, and inexplicable transaction patterns cited in the letter of charges evidence trafficking at Appellant as the most likely explanation.

Retailer Operations also properly determined that Appellant was not eligible for a trafficking CMP according to the terms of 7 CFR Section 278.6(i) of the SNAP regulations. The owner did not present evidence as required by the cited regulations. Therefore, based on the discussion herein, the decision to impose a permanent disqualification against Appellant is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, and to 7 CFR § 279.7 of the regulations with respect to the applicable rights to judicial review of the decision. Please note that if 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 the 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 thirty (30) days of receipt of this Decision.

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

M. Viens
ADMINISTRATIVE REVIEW OFFICER

July 31, 2019