

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

Stop Shop Go,

Appellant,

v.

Case Number: C0202605

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

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

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on October 26, 2017.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated October 3, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of March 2017 through August 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil

money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant responded to the charges in a letter dated October 9, 2017, but the response neither requested nor contained any evidence to be considered in support of the CMP. The Retailer Operations Division notified Appellant in a letter dated October 26, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program."

By letter dated October 31, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. Subsequent correspondence postmarked December 1, 2017, was received from Appellant.

STANDARD OF REVIEW

In an appeal of an adverse action, Appellant bears the burden of proving by a preponderance of evidence that the administrative action should be reversed. That means Appellant has the burden of providing relevant evidence that a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the argument asserted is more likely to be true than untrue.

CONTROLLING LAW

The controlling law in this matter is contained in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and implemented through regulation under Title 7 CFR Part 278. In particular, 7 CFR Part 278.6(a) and Part 278.6(e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking of SNAP benefits.

7 U. S. Code § 2021(a)(2) states, "Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or evidence obtained through a transaction report under an electronic benefit transfer system."

In addition, 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(e)(1)(i) reads, in part, “FNS shall . . . [d]isqualify 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, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

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

7 CFR §278.6(b)(2)(ii) states, inter alia: “Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence . . . that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in §278.6(i). This information and evidence shall be submitted within 10 days, as specified in §278.6(b)(1).” Part 278.6(b)(2)(ii) further states that if a firm fails to request 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 Part 278.6(b)(1), the firm shall not be eligible for such a penalty.

SUMMARY OF THE CHARGES

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during the six month period of March 2017 through August 2017. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. Excessively large purchase transactions were made from recipient accounts.

APPELLANT’S CONTENTIONS

In the response to the letter of charges, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- The owner has not broken any SNAP regulations and the store should not be disqualified.

This is a small town and everyone is competing with many people selling food so you have to come-up with different strategies in order to keep going. The store sells different products and hot and cold foods: crawfish by the sack from February-August, hot links, Boudin sausage, \$6.00/pound chicken, cold sandwiches, milk, eggs, ice cream, fruit salads, ham, cheese, shrimp, and cold platters. The store is surrounded by homes and is in walking distance which makes it convenient for a lot to shop at the store;

- There are people that come at you the wrong way, say all types of things to you, but the owner just says no and keeps going;
- Most people in Jeanerette are on EBT and live check to check. There is one big store that closes at 7:30 PM so by the time most people get home and get settled the store is closed while Stop Shop Go is within walking distance to a lot of people, young and old, who do not have cars and stays open until 10:00 PM; and,
- The store owner requests the decision to permanently disqualify the business be reconsidered and that the business be given a second chance to show that it can be a great value to the program and the community. In the future the owner will keep receipts.

Appellant submitted 20 photographs of store stock in support of these contentions.

The preceding may represent a summary of Appellant's contentions in this matter, however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

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

Store Background and FNS Store Visit

The FNS initially authorized the Appellant business on May 29, 2014, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 9, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a moderately sized store offering an extremely limited quantity and variety of staple foods and carrying no unique items.

- The business stocked typical mainstream American brand products and no ethnic or unique foods.
- A store employee did state that the business allowed telephone orders and had delivery service.
- There were no shopping carts and no handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- The checkout counter was approximately three feet wide by two feet deep with displays, the cash register, and a PIN pad limiting the amount of counter space available to place purchases upon. The very small size of the checkout area would make it problematic to process large orders.
- The checkout counter had one cash register, one POS terminal, and no optical scanner as evidenced by the store visit report and photographs.
- No food packages, bundles, bulk products, case sales, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for purchase except for drinks and ineligible items.
- The store visit report specifically notes that the business is not a specialty store and that there are no meat bundles or fruit and vegetable boxes.
- The store had an extremely limited stock of staple foods that also included many single serving and pre-packaged items with a large portion of inventory in accessory foods (primarily soda and other drinks), snacks, and ineligible items.
- The store had a kitchen/food prep area containing a cooktop grill, exhaust hood, deep fat fryer, prep tables, microwave oven, refrigerator, etc. There were no prices posted for the hot/cold, ready-to-eat prepared foods.
- There was a heated display case next to the checkout counter, but it was empty. The store owner stated that the store normally offers hot/cold prepared foods, but none were available on the day of the store visit. She also reported that store staple food stock was not being used in the preparation of the hot/cold prepared foods.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat/fish/ poultry, packaged lunch meats, jerky, sausage links), no hot dogs, no bacon, no deli meats, no eggs, no frozen entrees, no frozen dinners, no fresh fruit or vegetables, no frozen fruits or vegetables, no 100 percent vegetable juices, no canned or bottled fruit, a very limited selection of single serving nuts, only five canned soups, no single serving noodle soups, a very limited quantity and variety of canned and packaged staple food items, no flour, no baking mixes, no dried beans, only two packages of corn meal, no rolls, no tortillas or tostados, only one hot cereal, no cold cereals other than single serving, only four packages of dry pasta, no macaroni & cheese, no sour cream, no yogurt, only one butter, no deli cheeses, no packaged cheeses, no baby foods or infant formula, no coffee, no tea, and no expensive eligible food items.
- Ineligible items included: tobacco, alcohol, lottery, hot foods, household products, paper products, auto products, health and beauty items, ATM, foam coolers, and cell phones/phone cards while accessory foods included: candy, spices, condiments, cocoa, and carbonated/ uncarbonated drinks.
- Signage was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.

- Most food items were priced with all visible staple food prices ending in .x9 cents except for a very limited number of items priced differently such as snacks priced at 50 cents and two for \$3.00. Comments on the FNS store visit report by the contract reviewer specifically stated that most of the food prices ended in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- As confirmed by a store employee, the section of the FNS store visit report that lists the four most expensive eligible food items costing more than \$5.00 for sale in the store was blank as there are no items priced at \$5.00 or higher.
- The store was not a WIC vendor and did not stock any baby foods or infant formula.
- The business's hours of operation were open 7 AM-11 PM as confirmed by a store employee during the store visit.
- The store visit report and photographs showed that many shelves, coolers, and display racks were marginally stocked or empty and that the business was very disorganized as noted by the contract reviewer. The photographs also showed dust on canned and packaged products all indicative of a slow turnover of product.
- The quantity and variety of the store's staple food inventory was significantly less than that seen during the previous FNS store visit on May 19, 2014.

Multiple transactions in unusually short time frames

This Attachment documents 54 individual transactions in 22 sets of two or more transactions conducted by 13 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). These sets of transactions appear to be in amounts which are indicative of trafficking.

Appellant offers no evidence or rationales to support the legitimacy of the listed multiple transactions other than stating that the owner has not broken any SNAP regulations and the store should not be disqualified.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a convenience store's stock and facilities and are thus indicative of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 convenience stores further supporting that trafficking was occurring at the Appellant business during the period under review.

Based on the lack of any expensive items for sale at the Appellant business, it is likely that a transaction in the amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C) would therefore consist of more than

10 items and would require more time 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to complete as SNAP benefit transactions involving legitimate food purchases require many steps: 1) the customer waiting for the previous customer to pick-up their purchases and leave the checkout area; 2) the customer making multiple trips bringing items to the checkout counter for large purchases since the business has no shopping carts or hand baskets; 3) the cashier separating eligible from ineligible items; 4) the cashier handling individual items to determine the price, which in this case involved manual keying of amounts since there is no scanner; 5) the cashier weighing individual items if sold by weight; 6) the cashier entering prices into a register or adding machine, once for eligible foods and once for ineligible items, which is typical for larger purchases; 7) the cashier handling manufacturers cents-off coupons, if applicable; 8) the cashier bagging the items for carry-out; 9) the cashier informing the customer of the totals (one for eligible foods and one for non-eligible items, if applicable, which for large purchases includes most transactions); 10) the cashier pressing the “SNAP transaction key” on the POS device/card reader; 11) the customer swiping their EBT card; 12) the customer entering their required PIN; 13) the cashier entry of the purchase amount; 14) the cashier confirming the customer has a sufficient benefit balance; 15) the transaction being processed by the system and receiving approval; 16) the cashier printing the EBT and cash register receipts; 17) the cashier accepting an alternate form of payment for nonfoods and possibly handling cash change; and 18) the customer removing products from the checkout area so the next customer in line can begin the next transaction. All or most of these steps are inherent in most legitimate large SNAP purchases. One can readily surmise that while such transactions may be completed in succession, performing these processes on large transactions is not done rapidly. The amount of time required is generally proportional to the dollar amount of the transaction; typically, the larger the dollar amount transacted the longer the time period between transactions. The very limited counter space as well as manually key-entering multi-digit EBT card numbers adds additional time to transactions.

The Appellant business processed transactions well in excess 5 U.S.C. § 552 (b)(6) & (b)(7)(C) with five pairs of transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), markedly faster than supermarkets typically process purchases, yet the Appellant business has a very small, crowded checkout area, no optical scanner, and none of the logistical tools such as conveyor belts, rotating bagging platforms, or order separators that are routinely used in rapid throughput operations. It is therefore improbable that large dollar value transactions for the purchase of legitimate food items which would consist of a substantial number of lower priced items based on Appellant’s stock could be processed in the times listed in this Attachment given that the Appellant business has very limited checkout counter space, no carts or baskets, and no scanner. The large transaction dollar amounts and the short interval between transactions in this Attachment demonstrate the improbability of these being legitimate eligible food purchases and suggest trafficking as the most likely explanation. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It is an indication of potential trafficking when there are numerous transactions occurring outside of the store’s reported business hours.

Furthermore, since the Appellant business has only low priced food items with all priced at less than \$5.00, the purchase of the many items with prices ending in .x9 cents needed for the large transactions in this Attachment would most likely not result in a total ending in a same dollar amount 5 U.S.C. § 552 (b)(6) & (b)(7)(C). When there are a disproportional amount of

transactions ending in a same cent value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are indicative of trafficking.

An analysis of the shopping patterns for the 13 households listed in this Attachment shows that all of these households have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a distance from Appellant's location with all of the households shopping at a large number of super stores and supermarkets.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). This analysis also identified eight households where the vast majority of their SNAP transactions were conducted at other stores located more than 5.6 miles away as well as one household that only shopped at other stores located more than 9.2 miles from Appellant's location. This is an indication that these nine households likely reside at a distance from the Appellant business and brings-up the question of why would these households elect to travel a sizeable distance, often several miles round trip from their regular shopping areas, past numerous larger and better stocked stores to conduct multiple purchases at a poorly stocked convenience store that carries no unique foods or offers any special services.

Appellant's contentions fail to offer any explanation or rationale for these unusual and suspicious shopping patterns. Common sense dictates that it is improbable that households with limited cash resources would choose to travel these distances if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at and therefore more likely than not that these households were trafficking SNAP benefits at the Appellant business and the multiple transactions were attempts by store employees to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions. This is a method used by stores to avoid high dollar transactions that cannot be supported.

There may be legitimate reasons why a SNAP household might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. Multiple transactions over a short period of time, especially those of high dollar values, are indicative of attempts to obscure trafficking by dividing a large dollar value transaction into a series of smaller dollar value transactions and are a method which violating stores use to avoid high dollar transactions that cannot be supported.

High Dollar Value Transactions

This Attachment lists 266 individual EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The substantial number of high dollar transactions is uncharacteristic for a convenience store of this size offering an extremely limited stock of staple foods and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$8.10 for this store type in Iberia County. The 266 excessively large SNAP EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This is unusual and indicative of trafficking.

The record shows there is one supermarket within a one mile radius of Appellant's store with an additional four super stores and six supermarkets located within 10 miles. The evidence under

review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as at many full-line supermarkets and super stores, located nearby as well as at a significant distance from Appellant's location that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant business, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

Evidence shows that the difference in the average SNAP transaction dollar amount, the total SNAP transaction dollar volume, and the SNAP transaction count for Iberia County convenience stores during the review months and at the Appellant business is significant.

5 U.S.C. § 552 (b)(7)(E). The unusually high number of SNAP transactions is an indication that the business may be dividing larger transactions into multiple smaller transactions in an effort to circumvent detection as previously discussed. A comparison of Appellant's SNAP redemptions to that of nearby convenience stores that had redemptions for the review period shows similar differences. Additionally, none of these nearby stores exhibit the same suspicious transaction patterns listed in the charge letter for the Appellant business even though all are located in proximity to Appellant's location and would therefore be expected to share the same SNAP customer base and shopping patterns. This is a further indication that the SNAP transactions in this Attachment and the others do not represent legitimate food purchases. The Retailer Operations Division considered all of these to be indicators of unusual and suspicious activity.

Appellant contends that the store sells different products and hot and cold foods: crawfish by the sack from February-August, hot links, Boudin sausage, \$6.00/pound chicken, cold sandwiches, milk, eggs, ice cream, fruit salads, cold sandwiches, ham, cheese, shrimp, and cold platters. The store is surrounded by homes and is in walking distance which makes it convenient for a lot to shop at the store. Most people in Jeanerette are on EBT and live check to check. There is one big store that closes at 7:30 PM so by the time most people get home and get settled the store is closed while Stop Shop Go is within walking distance to a lot of people, young and old, who do not have cars and stays open until 10:00 PM. Appellant submitted 20 photographs of store stock in support of these contentions.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. An analysis of shopping patterns by the Retailer Operations Division shows that households in this Attachment are regularly shopping at much larger stores, and conducting transactions of large dollar amounts, yet are conducting comparable or higher dollar value transactions at the Appellant business. It would make no sense for a household that regularly shops at larger stores and apparently has no transportation limitations to spend large dollar amounts at the Appellant business since its cost of goods would be higher than that of larger stores such as supermarkets or super stores. The household shopping analysis cited in the previous section shows that, contrary to Appellant's contention, most, if not almost all of the households shopping at the Appellant business have ready access to transportation as evidenced

by the significant distances these households are travelling on a regular basis to shop at a variety of super stores and supermarkets located in New Iberia and other distant locations.

Information obtained during the FNS store visit on September 9, 2017, shows that the Appellant business offers an extremely limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Most of the inventory for sale consists of inexpensive snacks and beverages as well as ineligible items. Since the Appellant business offers no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, an extremely limited quantity and variety of processed meats and seafood (canned meat/fish/poultry, packaged lunch meats (ham), jerky, and sausage links), no hot dogs, no bacon, no deli meats, no eggs, no frozen entrees, no frozen dinners, no fresh fruit or vegetables, no frozen fruits or vegetables, no 100 percent vegetable juices, no canned or bottled fruit, a very limited selection of single serving nuts, only five canned soups, no single serving noodle soups, a very limited quantity and variety of canned and packaged staple food items, no flour, no baking mixes, no dried beans, only two packages of corn meal, no rolls, no tortillas or tostados, only one hot cereal, no cold cereals other than single serving, only four packages of dry pasta, no macaroni & cheese, no sour cream, no yogurt, only one butter, no deli cheeses, no packaged cheeses, no baby foods or infant formula, no coffee, no tea, and has no expensive eligible food items, these patterns are deemed to be suspicious. The fact that: tobacco, alcohol, lottery, hot foods, household products, paper products, auto products, health and beauty items, ATM, foam coolers, and cell phones/phone cards are not eligible for purchase with SNAP benefits also provides no justification for the high transaction amounts. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The 20 photographs submitted by Appellant support that the Appellant business primarily stocks snacks, candy, and a large quantity and variety of drinks with a very limited quantity and variety of canned and packaged staple food items as stated above. It is further noted that some of the staple food items in these photographs (eggs, packaged cheese slices, canned fruit, macaroni & cheese, flour, dried beans, canned fruit, and cold prepared party trays) were not in stock on the day of the FNS store visit indicating that some of the 20 photographs may have been staged in an attempt to avoid permanent disqualification. While the Appellant business is open later than the nearby supermarket that closes at 7:30 PM, there are relatively few transactions occurring after 7:30 PM.

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a convenience store that does not address all of their food shopping needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly. The Appellant business has a very small checkout area and no shopping carts or baskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Additionally, Appellant furnished no itemized cash register and EBT receipts for the period under review to document the legitimacy of these excessively large transactions and no evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. As previously stated, the Appellant business

has a very small checkout area and does not have shopping carts, hand baskets, or a scanner thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely that the amounts were contrived.

It is further noted that SNAP redemptions at the Appellant business fluctuated significantly following the store visit on September 9, 2017, and also after receipt of the charge letter on October 4, 2017. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). A pronounced decrease in SNAP transactions immediately following the store visit and/or receipt of the charge letter is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

Other Contentions

It is important to state that this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates, by a preponderance of the evidence, that the disqualification should be reversed. In this case, therefore, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking with SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If this is not demonstrated, the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact. Regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, ownership is accountable for the proper training of staff and the monitoring and handling of SNAP benefit transactions. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.” SNAP regulations at 7 CFR § 271.2, define trafficking as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . .” SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, that “FNS may disqualify any authorized retail food store . . . if the firm

fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an **electronic benefit transfer system . . .**” (Emphasis added). In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business during the period under review. This firm was selected as a result of a series of complex algorithms that make numerous data comparisons with other like type firms during the period under review. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photographs from the FNS store visit, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. This analysis also included a review of the business to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

The transaction comparison and analysis cited above also identified a household that had a manually key entered transaction at the Appellant business followed by two swiped EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** at two different chain super stores located more than 500 miles away in another state. Due to the great distance involved combined with the short period of time between the transactions, it would have been impossible for this household to have conducted all three transactions in person and more likely that the manually key entered transaction at the Appellant business was trafficking. Manual transactions are those in which the magnetic strip is not being read by the store’s POS device and the clerk must manually key enter the lengthy EBT card number. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have the SNAP recipient’s PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the recipient has the actual EBT card and then enters the PIN. An analysis of the transaction data in both Attachments identified manually key entered transactions at the Appellant business by at least three households that were preceded or followed by swipe transactions at other SNAP retailers which fit this pattern and are indicative of trafficking. A review of other EBT transactions on the dates of these manually key entered transactions shows that the Appellant business’s POS device was functioning properly as there were swipe transactions before and after the manual transactions. Since it would be physically impossible for these three households to travel at the impossible speeds needed to cover the distances between Appellant’s location and the other SNAP retailers in the short time between these transactions it is more likely than not that the manually key entered transactions were, in fact, trafficking.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation for the questionable transactions listed in the charge letter Attachments. It is herein determined that Appellant has not provided a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments was due primarily to trafficking in SNAP benefits.

The evidence under review shows SNAP activity indicative of trafficking. Neither the Food and Nutrition Act of 2008, as amended, nor the regulations issued pursuant thereto cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be the most serious violation, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification “shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store.” In keeping with this legislative mandate, Section 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

CIVIL MONEY PENALTY

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP in lieu of a disqualification under 7 CFR 278.6(i) because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations within the specified timeframe. As such, the Retailer Operations Division determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

Appellant made no mention of how the business met any of the four criteria in either its response to the charge letter or in the request for administrative review and no documentation or other evidence of any kind, including written statements, was subsequently received from Appellant in support of a trafficking CMP. Therefore, Appellant failed to meet the regulatory standard for a trafficking CMP as it did not provide substantial evidence that it met all four criteria required by 7 CFR §278.6(i). Based on the above, the Retailer Operations Division’s decision not to impose a CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in two Attachments of EBT transaction data, the inadequacy of the store's staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type and larger stores in the county and state.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant's owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

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

ROBERT T. DEEGAN
Administrative Review Officer

February 13, 2018