

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

Super Thrift Food Store,

Appellant,

v.

Case Number: C0205060

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a Permanent Disqualification from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed against Super Thrift Food Store (hereinafter “Thrift Food Store”) by the Retailer Operations Division of FNS.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a Permanent Disqualification against Thrift Food Store on May 10, 2018.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated February 26, 2018, the Retailer Operations Division informed the Appellant that Thrift Food Store was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 – 282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm."

In written correspondences received by the Retailer Operations Division on March 15, 2018 and April 27, 2018, the Appellant, through counsel, denied the trafficking allegations and cited credit

extension to area SNAP customers as well as other explanations for the questionable SNAP transactions that were outlined in the February 26, 2018 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated May 10, 2018, informing the Appellant that Thrift Food Store was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations.

In a letter postmarked May 23, 2018, the Appellant, through counsel, requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated June 7, 2018.

STANDARD OF REVIEW

In appeals of adverse actions, 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 evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). 7 U.S.C. § 2021, Part 278.6(a) and Part 278.6(e)(1)(i) of the Regulations establish the authority upon which a permanent disqualification may be imposed upon a retail food store or wholesale food concern. There also exist FNS policy memoranda and clarification letters which further explain the conditions necessary in order to permanently disqualify retail stores.

7 U.S.C. § 2021(b)(3)(B) states, inter alia:

... 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) states, inter alia:

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) states:

Disqualify a firm permanently if: Personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, inter alia:

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

7 CFR § 278.6(f)(1) states, inter alia:

A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification.

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 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 ...

7 CFR § 278.6(b)(2) states, inter alia:

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

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

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from July 2017 through December 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple purchase transactions made from individual benefit accounts in unusually short timeframes; and
- There were excessively large purchase transactions made from recipient accounts.

APPELLANT'S CONTENTIONS

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

In the replies to the Charge Letter and in the review request postmarked May 23, 2018, and in a subsequent correspondence dated June 18, 2018, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant denies that trafficking of SNAP benefits took place at Thrift Food Store.
- Some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of Thrift Food Store accepting SNAP benefits as repayments on short term credit accounts from area SNAP customers upon receipt of their monthly EBT benefit allotments. The Appellant made a note of the credit transactions on a piece of paper and when the SNAP customer paid off the extended credit, it destroyed the note since the people did not owe the money any more.
- The Appellant was unaware the extending credit to SNAP customers is a violation of the SNAP rules.
- To permanently disqualify Thrift Food Store from participating in the SNAP because the Appellant does not have sufficient records of credit extension to SNAP customers is illogical and without benefit of due process. Destroying the Appellant's source of income should only happen on the strongest of evidence.
- Many SNAP disqualifications, such as in this case, are imposed on small operations, often owned by lightly educated foreign-born people.
- In addition to credit extension, the multiple purchase transactions made from individual household accounts in unusually short timeframes are the result of SNAP customers purchasing food items from Thrift Food Store at their discretion. In addition, it is likely that SNAP customers are sharing their SNAP cards and PIN numbers with others. Customers are making all of their food purchases at Thrift Food Store as it is located in an area in which there are no supermarkets or large grocery stores. Most of the customers walk to Thrift Food Store to do their shopping as they do not have transportation which limits how much they can carry by hand and this often results in multiple transactions in a single day. Thrift Food Store is located in Dixie Hill Plaza. With other shops located nearby, residents are shopping multiple times during the weekdays or two to three times per day for foods at the subject store.
- In addition to credit extension, the excessively large purchase transactions are the result of customers making all of their food purchases at Thrift Food Store as it is located in an area in which there are no supermarkets or large grocery stores. Most of the customers walk to Thrift Food Store to do their shopping as they do not have transportation available to them. Thrift Food Store's placement within Dixie Hill Plaza also gives

many of the local elders, mothers with children, and those with disabilities the benefit of shopping for the items they need hassle free of traveling long distances riding Marta. The store is located a comfortable distance of about less than two miles amongst a minimum of six apartment buildings. Thrift Food Store is more than a convenience store for those living within the neighborhood.

- To ensure that these types of SNAP violations do not occur in the future, the Appellant has stopped extending credit to SNAP customers. In addition, the Appellant has trained all staff on the SNAP rules.
- A permanent SNAP disqualification will impose a hardship on the many SNAP customers that depend upon Thrift Food Store for their grocery needs.
- The Appellant requests that it be sanctioned under the rules prohibiting credit extension to SNAP customers in lieu of being permanently disqualified from the SNAP for trafficking.

In support of the Appellant's contentions, the following documents were submitted to FNS:

- Signed statements from eight SNAP customers.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Thrift Food Store as a convenience store on March 28, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a December 14, 2017 store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm's irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 4,200 square feet in size and it does not have a storage area/room or cooler/freezer outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- Two cash registers and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanners;
- Typical convenience store layout and inventory with predominantly snack foods, cakes/pastries, candy, and beverages;
- Store visit observations noted an empty cooler and dusty cans/packages;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- Not a WIC Program vendor and it does not stock any infant formula or infant foods;
- Only three high priced food items (costing \$5.00 and above) in stock which include coffee at \$7.99 per 961 gram can; Coke® at \$6.99 per 12 pack; and frozen chicken at \$5.99 per pack;

- It does not appear from the store visit observations that the store extends credit to customers;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include grocery package deals or discounts on foods;
- Limited checkout counter area and it has miscellaneous items stocked there. As such, the checkout counter does not provide adequate space for the large amounts of individual food items necessary to make up many of the large transactions cited in the Charge Letter Attachments;
- Frozen food items include ice cream and a minimal amount of chicken;
- No fresh unprocessed meats, poultry, or seafood;
- No frozen unprocessed meats or seafood;
- No deli case/section in which deli meats and cheeses are sold by the pound;
- Other meat items include sausage, packaged lunch meat, hot dogs, canned fish, canned/potted meat, and eggs;
- Store has a small kitchen area in which hot and/or cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation (i.e., hot dogs) are available for purchase;
- A very minimal variety and amount of fresh produce;
- Other staple foods available for purchase include such items as 100% juice, soup, canned fruits, canned vegetables, milk, margarine, pasta, rice, bread, cereal, flour, corn meal, baking mix, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as candy, carbonated and non-carbonated drinks, condiments, candy, sugar, and oil; and
- Ineligible nonfood items include such items as tobacco products, health and beauty items, paper products, household cleaning supplies, pet food, laundry detergent, housewares, clothing, alcohol, lottery tickets, hair extensions, sunglasses, infant diapers, incense, etc.

This documentation reflects that the firm is a typically stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in Fulton County, Georgia (the county in which Thrift Food Store is located) during the analysis period was \$6.52, reflecting that large purchases are not routinely made in such stores.

On review, the investigative materials provided by the Retailer Operations Division, including computer printouts of transaction data available from Federal records, store visit observations, information regarding area competitor firms, and household shopping patterns, were analyzed.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In

this case, the Retailer Operations Division determined that the Appellant's contentions did not outweigh the evidence. The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that questionable transactions were the result of trafficking. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

Denial of Trafficking Charges

Regarding the Appellant's contention that it denies the trafficking allegations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is, as noted above, to determine whether the Appellant demonstrates by a preponderance of the evidence that the permanent disqualification should be reversed. In this case, therefore, if the Appellant demonstrates by a preponderance of the evidence that trafficking did not occur in the Appellant's firm, then trafficking will be considered not to have occurred 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.

Credit Transactions

The Appellant contends that some of the questionable SNAP transactions listed in the Charge Letter Attachments are the result of Thrift Food Store accepting SNAP benefits as repayments on short term credit accounts from area SNAP customers upon receipt of their monthly EBT benefit allotments. The Appellant made a note of the credit transactions on a piece of paper and when the SNAP customer paid off the extended credit, it destroyed the note since the people did not owe the money any more.

When a retailer claims it maintains credit accounts to explain irregular SNAP transactions and data patterns, FNS requires a level of detail regarding the legitimacy of the claim. This is because retailers have often made false admissions of credit in an attempt to obtain a lesser penalty after committing more egregious violations such as trafficking. Credit transactions must be accounted for with substantive evidence such as the dates credit was extended, to whom, for what amount, and for what items.

The Appellant did not provide FNS with any evidence or documentation to support its contention that credit was extended to SNAP customers resulting in some of the questionable SNAP transactions outlined in the Charge Letter Attachments. FNS reviewed the information provided from the Appellant and properly determined that the information was insufficient to support the Appellant's credit extension contention for the following reasons:

- The Appellant provided no documentation to indicate that it kept records of credit extension to SNAP customers other than its statement of such;
- The Appellant did not provide FNS with the names of the SNAP customers to whom credit had been extended to during the review period. In addition, the Appellant did not

provide FNS with any SNAP recipient identifiable information for the SNAP customers to whom credit had been extended;

- The Appellant provided no documentation/information that FNS could use to match the questionable SNAP transactions outlined in the Charge Letter to individual credit purchases;
- There was no documentation provided listing the individual foods that were purchased on credit and by which SNAP customer;
- No documents were provided to validate whether the alleged credit was paid off by cash, credit/debit card, personal check, or SNAP benefits;
- No documentation was provided that indicates when the food items were purchased on credit and when the credit was paid off;
- No documentation was provided that would validate that the credit extended to each SNAP customer was done so during the six month review period; and
- No documentation was provided that would validate the amount of credit that was extended to each customer during the six month review period.

In conclusion, although Thrift Food Store may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, the evidence submitted by the Appellant does not support its contention that the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Unaware Credit a SNAP Violation

The Appellant contends that it was unaware the extending credit to SNAP customers is a violation of the SNAP rules. The Appellant, upon being authorized by FNS to participate in the SNAP on March 28, 2016, received the same Authorization Kit that is sent to all retail food stores when they are newly authorized in the SNAP, including various information booklets, signs and posters indicating the Do's and Don'ts, rules of the SNAP available in several different languages, a copy of the SNAP regulations and a training video. Moreover, periodic newsletters have been sent to all retail food stores participating in the SNAP with a reminder in almost every newsletter sent that accepting nutrition assistance program benefits for payment on credit accounts is a violation. In accordance with 7 CFR § 278.2(f) . . . SNAP benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit". As such, the Appellant's contention is unfounded.

Due Process

The Appellant contends that permanently disqualifying Thrift Food Store from participating in the SNAP because it does not have sufficient records of credit extension to SNAP customers is illogical and without benefit of due process. Destroying the Appellant's source of income should only happen on the strongest of evidence. The Appellant replied to the charges in writing (via two written correspondences from the Appellant's counsel) to the Retailer Operations Division, denying the charge of trafficking and offering various explanations, and evidences, for the questionable transactions. After considering the evidence of the case and the Appellant's replies, the Retailer Operations Division determined that a permanent disqualification is warranted. The action was not arbitrary or capricious as it followed the agency's due process procedures which

are two-fold in nature. First, the retailer is afforded an opportunity to reply to the charges as specified by the Retailer Operations Division; the Appellant has availed itself of this first aspect of the due process procedures in the form of written replies to the Retailer Operations Division. The second level of due process involves an administrative review, of which the Appellant has likewise availed itself (through counsel) and in the process of which the Appellant was granted an additional three weeks within which additional information may be provided in support of the request for review.

The purpose of the administrative review process is to ensure that firms aggrieved by FNS' adverse actions have the opportunity to have their position fairly considered by an impartial reviewing authority prior to that adverse action becoming final. The Appellant has been duly given, and has taken, the opportunity to present to USDA through the administrative review process whatever evidence and information it deems as pertinent in support of its position that the Retailer Operations Division's adverse action should be reversed. Therefore, any evidence and information that the Appellant presented to the Retailer Operations Division, as well as any such information submitted subsequently, has now been considered in this administrative review in rendering the final agency administrative decision in this case. The record does not indicate any departure from established policy or procedures with regard to the Appellant's right to a fair and thorough review. The Appellant has exercised its opportunity to reply to the Charge Letter and its administrative review rights, and by doing so has availed itself of the full complement of the agency's statutory obligations with regard to due process.

Foreign-born Persons Get Harsher Penalty

The Appellant contends that many SNAP disqualifications, such as in this case, are imposed on small operations, often owned by lightly educated foreign-born people. Neither the Food and Nutrition Act, 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. The Act, at § 2021, does not allow for discretion in determining sanctions for trafficking and is quite specific in its requirement 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, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked. Therefore, permanent disqualification is warranted for *any* firm which is determined to have trafficked in SNAP benefits. Moreover, with regards to the allegation that the sanction against Thrift Food Store is greater than would be levied against non-foreign born persons, there is no evidence that this is a true statistic, nor is there evidence in the file that the Retailer Operations Division either knew or could ascertain that the Appellant was a foreign-born person.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 29 transaction sets (75 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. This average transaction is ten times larger than the average transaction made at convenience stores in Fulton County, Georgia during the review period. It is not credible that the subject store would have so many suspicious SNAP transactions greatly

exceeding the average SNAP transaction for convenience stores in Fulton County during the review period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account to avoid detection of single high dollar transactions that cannot be supported by the firm's food inventory and infrastructure.

The Appellant contends that in addition to credit extension, the multiple purchase transactions made from individual household accounts in unusually short timeframes are the result of SNAP customers purchasing food items from Thrift Food Store at their discretion. In addition, it is likely that SNAP customers are sharing their SNAP cards and PIN numbers with others. Customers are making all of their food purchases at Thrift Food Store as it is located in an area in which there are no supermarkets or large grocery stores. Most of the customers walk to Thrift Food Store to do their shopping as they do not have transportation which limits how much they can carry by hand and this often results in multiple transactions in a single day. Thrift Food Store is located in Dixie Hill Plaza. With other shops located nearby, residents are shopping multiple times during the weekdays or two to three times per day for foods at the subject store. However, the Appellant's contentions are not supported by available evidence.

With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

With regard to the Appellant's claim that the multiple purchase transactions made from individual household accounts in unusually short timeframes are the result of SNAP customers sharing their SNAP cards and PIN number with others, FNS acknowledges that the SNAP regulations and statute do not govern or mandate how or when a SNAP household should spend its benefit allotment. Regulations also do not govern how frequently a customer may visit a store or whether household members should purchase items independently. SNAP benefits are issued to individual households and as such are meant to provide most of the nutritional needs of that household. Although sharing of SNAP benefits can occur, they are not intended to be used by households purchasing eligible food items for other household members or other households. Again, the SNAP regulations do not govern what happens to the food once it is purchased. However, the repetitive nature of the transactions identified in Attachment 1 are vastly different in Thrift Food Store than in any other nearby comparable firm giving credibility to the notion that trafficking is mostly likely taking place.

The Appellant contends that customers are making all of their food purchases at Thrift Food Store as it is located in an area in which there are no supermarkets or large grocery stores. Most of the customers walk to Thrift Food Store to do their shopping as they do not have transportation which limits how much they can carry by hand and this often results in multiple transactions in a single day. Thrift Food Store is located in Dixie Hill Plaza. With other shops located nearby, residents are shopping multiple times during the weekdays or two to three times per day for foods at the subject store.

With regard to these contentions, while there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, the SNAP transactions noted

in this Charge Letter Attachment are questionable because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. Although it is not uncommon for customers to conduct more than one transaction per day, it is not common that such multiple transactions are for large dollar amounts. Thrift Food Store is not set up to provide for all of one's food needs with no fresh meats, poultry, or seafood, only one variety of frozen poultry in minimal quantities, no frozen meats or seafood, no frozen fruits or vegetables, a very minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. Also, the store visit observations indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. It is irregular for convenience stores to have purchases such as those cited, especially when Thrift Food Store stocks only a few high priced food items so the majority of the food items stocked at the store are low priced items.

A review of client shopping data for the review period shows that clients shopping at Thrift Food Store are also shopping at other area grocery stores, as well as full-line supermarkets and super stores that most likely offer customers a much larger quantity and variety of eligible food items for better prices. Based on these shopping patterns, transportation to other stores is not an issue for these SNAP customers. Yet, these customers continue to shop and spend suspicious high dollar amounts in short timeframes at Thrift Food Store, where the eligible food stock is minimal, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at better stocked stores. This is a strong indicator of trafficking.

Sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 12 SNAP authorized retailers located within a 1.0 mile radius and 48 SNAP authorized retailers located within a 2.0 mile radius of Thrift Food Store that can meet the nutritional needs of SNAP customers. Several of these authorized SNAP stores are larger than Thrift Food Store and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. As mentioned previously, SNAP customers who shopped at Thrift Food Store during the six month review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores does not appear to be an explanation for Thrift Food Store's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

The Appellant did not provide any compelling justification as to why SNAP households are conducting multiple transactions at Thrift Food Store or evidence that all of the irregular transactions cited in the Charge Letter were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

Excessively Large Purchase Transactions

Charge Letter Attachment 2 lists 254 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This average transaction is almost nine times larger than the average transaction made at convenience stores in Fulton County, Georgia during the review period. Even the smallest transaction cited in this Charge Letter Attachment is four times larger than this store type in

Fulton County. As noted previously, there is no indication from the store visit report that Thrift Food Store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that in addition to credit extension, the excessively large purchase transactions are the result of customers making all of their food purchases at Thrift Food Store as it is located in an area in which there are no supermarkets or large grocery stores. Most of the customers walk to Thrift Food Store to do their shopping as they do not have transportation available to them. Thrift Food Store's placement within Dixie Hill Plaza also gives many of the local elders, mothers with children, and those with disabilities the benefit of shopping for the items they need hassle free of traveling long distances riding Marta. The store is located a comfortable distance of about less than two miles amongst a minimum of six apartment buildings. Thrift Food Store is more than a convenience store for those living within the neighborhood. In support of its contentions, the Appellant provided FNS with signed statements from eight SNAP customers. However, the Appellant's contentions are unsubstantiated.

With regard to the Appellant's claim that these questionable SNAP transactions are due to SNAP benefits being accepted as repayment on credit accounts, as noted above, the information provided by the Appellant is not sufficient to support that these transactions were due to repayments of credit accounts.

FNS does not dispute the Appellant's claim that Thrift Food Store is located less than two miles amongst a minimum of six apartment buildings making it a convenience to SNAP customers. However, the store visit report and photos of December 14, 2017 indicate that Thrift Food Store is stocked with a minimal quantity and variety of staple foods as it stocks no fresh meats, poultry, or seafood, only one variety of frozen poultry in minimal quantities, no frozen meats or seafood, no frozen fruits or vegetables, a very minimal variety and amount of fresh produce, and lacks an abundant depth and breadth of staple foods. The inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts as well as showing the store has a limited checkout counter space and no shopping carts or hand-held baskets in which to transport the large number of items required to make up these large transaction amounts. Without these, it is unlikely that such large dollar value transactions could be for actual food purchases and more likely they are trafficking.

The record shows that there are 12 SNAP authorized retailers located within a 1.0 mile radius and 48 SNAP authorized retailers located within a 2.0 mile radius of Thrift Food Store that can meet the nutritional needs of SNAP customers. Several of these authorized stores are larger than Thrift Food Store and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store. An analysis of the shopping patterns for all of the SNAP households listed in this Attachment shows that the majority of the households shopping at Thrift Food Store have access to transportation and that all are regularly shopping at a variety of larger stores, including super stores and/or supermarkets, located a few miles distance from the Appellant's location. While Thrift Food Store does offer some staple food items, SNAP recipients are already shopping at other larger SNAP retailers located within a few miles of the Appellant's business offering a greater quantity and variety of products, including fresh

meats/seafood and produce, at lower prices. Therefore, the store has nothing to attract SNAP customers as there are no special or custom services offered that are not available at other area authorized stores.

In support of its contentions, the Appellant provided FNS with signed statements from eight SNAP customers attesting that there are no other stores nearby where they can buy groceries, they have only used their EBT cards to purchase groceries from the subject firm, and they have never received cash in exchange for SNAP benefits at Thrift Food Store. The signed statements included the customers' names and last four digits of their EBT card numbers. FNS reviewed the SNAP transactions of five of the SNAP customers who signed statements on behalf of the Appellant. When FNS searched the Georgia EPPIC Client Account, the agency could only match three of the five client statements to the EBT card numbers and SNAP customer names provided. There were no matches to the EBT card numbers or household numbers in the Georgia EPPIC Client Account for two of the SNAP customers who provided signed statements.

An analysis of the three SNAP customers found in the Georgia EPPIC Client Account indicates that the customers shopped at large grocery stores or super stores during the six month review period. These shopping patterns indicate that these SNAP customers have access to transportation and that all are regularly shopping at larger stores.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Therefore, the Appellant's claim that there are no other stores nearby where SNAP customers can purchase groceries is unfounded.

With regard to the statements provided by a few of the SNAP customers of Thrift Food Store which purport to establish that the questionable SNAP transactions were legitimate and that no trafficking occurred, the truth of such declarations can neither be confirmed nor denied. Although such affidavits/statements may be sworn to and notarized, that does not mean that they are necessarily truthful. One would not expect SNAP customers to admit that questionable transactions were not legitimate, were it really so. On the contrary, one would expect that any SNAP customer affidavit provided would attest to questionable transactions being legitimate.

FNS compared the SNAP transaction activity of Thrift Food Store during the review period to the SNAP transaction activity of three SNAP authorized convenience stores located within a 1.0 mile radius of the subject store. These area convenience stores offer a comparable quantity and variety of food items at comparable or better prices as compared to Thrift Food Store. Thrift Food Store conducted significantly more "multiple purchase transactions made from individual household accounts in unusually short timeframes" and "excessively large purchase transactions" as compared to the three comparative convenience stores. This transaction activity is a good indicator of illicit SNAP activity.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). There is no indication from the store visit report that Thrift Food Store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items. This transaction activity is also suspicious and unusual and is indicative of trafficking.

The Appellant did not provide FNS with its vendor invoices for the foods that were purchased for Thrift Food Store during the six month review period to help substantiate that enough staple food items had been purchased to cover/explain the SNAP transactions that occurred during the review period. Therefore, FNS could not conduct an invoice analysis. It is important to note that even if the Appellant had provided FNS with all of its vendor invoices for the review period and the invoices indicated that the Appellant had purchased sufficient food inventory to account for the firm's SNAP redemption volume, sufficient inventory alone does not explain the suspicious patterns of SNAP transactions such as rapid and consecutive transactions by individuals during the same store visit or in a single day.

Even the large dollar transactions would remain questionable if there were sufficient food inventory to support such transactions when consideration is made of there being only a minimal variety of stock in the store, no fresh meats, poultry, or seafood, only one variety of frozen poultry in minimal quantities, no frozen meats or seafood, no frozen fruits or vegetables, a very minimal variety and amount of fresh produce, a greater variety of foods at comparable or lower prices at other stores, no shopping carts or hand-held baskets available for customer use, and little counter space to place food for purchase at the checkout counter. Even if there were sufficient food stock at Thrift Food Store to mathematically support high dollar transactions, there does not appear to be anything that would reasonably attract SNAP households to shop there, a convenience store, in some cases traveling a few miles to do so, and spend substantial amounts of their SNAP benefits.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of three SNAP households identified in the Charge Letter to analyze their shopping patterns at Thrift Food Store compared to their shopping patterns at other SNAP authorized stores. Each of these households had access to, and shopped at larger stores including super stores and/or supermarkets. It is obvious that these SNAP households had transportation available to them to reach these other authorized stores. However, despite this access to better stocked stores, these sampled households conducted excessively large transactions at Thrift Food Store **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** of shopping at the larger stores where they conducted much smaller SNAP purchases. It is highly unlikely that a convenience store with minimal staple foods would have legitimate SNAP transactions greater than these larger and better stocked stores.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping. Based on the preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 2 are more likely than not the result of trafficking in SNAP benefits.

Corrective Action

The Appellant contends that in order to ensure that these types of SNAP violations do not occur in the future, it has stopped extending credit to SNAP customers. In addition, the Appellant has trained all staff on the SNAP rules.

It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is not the authority of this review to consider what subsequent remedial actions may have been taken so that the store may begin to comply with program requirements. There is no provision in the SNAP regulations or internal agency policy directives for waiver or reduction of an administrative penalty assessment on the basis of after-the-fact corrective action implemented subsequent to investigative findings of program violations. Therefore, the Appellant's contention that it has taken corrective actions, though they would have been valuable towards preventing future program violations, does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

Customer Hardship

The Appellant contends that a permanent SNAP disqualification will impose a hardship on the many SNAP customers that depend upon Thrift Food Store for their grocery needs. 7 CFR § 278.6(f) of the SNAP regulations provides for civil money penalty assessments in cases where disqualification would cause "hardship" to SNAP households because of the unavailability of a comparable participating food store in the area to meet their needs. However, this regulation also sets forth the following specific exception to such assessments there under: "A civil money penalty for hardship to SNAP households may not be imposed in lieu of a permanent disqualification". Therefore, since this case involves a permanent disqualification action, the civil money penalty provision is not applicable to the present case.

Reconsideration of Penalty

The Appellant requests that it be sanctioned under the rules prohibiting credit extension to SNAP customers in lieu of being permanently disqualified from the SNAP for trafficking. However, the Food and Nutrition Act of 2008, at § 2021, does not allow for discretion in determining sanctions for trafficking and is specific in its requirement that "... a disqualification . . . 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 ...". In keeping with this legislative mandate, 7 CFR § 278.6(e)(1)(i) of the SNAP regulations states that FNS shall disqualify a firm permanently if personnel of the firm have trafficked.

CIVIL MONEY PENALTY

As previously indicated, the May 10, 2018 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated February 26, 2018 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. 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. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division's determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

CONCLUSION

The Retailer Operations Division's analysis of the Appellant's EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

The record has yielded no indication of error or discrepancy in the reported findings by the Retailer Operations Division that program benefits were accepted in exchange for cash or consideration other than eligible food. Therefore, based on a review of the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged. Therefore, the decision to impose a permanent disqualification from participation in the SNAP against Super Thrift Food Store is sustained.

RIGHTS AND REMEDIES

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

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

LORIE L. CONNEEN
Administrative Review Officer

August 30, 2018