

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

TC Hot Stop,

Appellant,

v.

Case Number: C0200834

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 TC Hot Stop (hereinafter “Hot Stop”) 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 Hot Stop on August 17, 2017.

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 July 3, 2017, the Retailer Operations Division informed the Appellant that Hot Stop 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 both telephone responses and written responses that were received by the Retailer Operations Division on July 6, 2017, July 12, 2017, July 13, 2017, July 14, 2017, July 17, 2017, July 21, 2017, July 25, 2017, July 31, 2017, and August 7, 2017, the Appellant cited credit extension to a few SNAP customers **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** and home delivery of food purchases to SNAP customers as the explanations for the questionable SNAP transactions that were outlined in the July 3, 2017 Charge Letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a Determination Letter dated August 17, 2017, informing the Appellant that Hot Stop 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 August 28, 2017, the Appellant 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 September 5, 2017.

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 § 278.2(f) states, inter alia:

SNAP [Food Stamp] benefits shall not be accepted by an authorized retail food store in payment for items sold to a household on credit. A firm that commits such violations shall be disqualified from participation in the SNAP [Food Stamp Program] for a period of one year.

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 January 2017 through April 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple 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 Appellant's replies to the Charge Letter and in the review request postmarked August 28, 2017, the Appellant stated the following summarized contentions, in relevant part:

- The multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Hot Stop accepting SNAP benefits as repayments on credit accounts from seven different SNAP customers. The Appellant gave each SNAP customer a line of credit **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.
- The excessively large purchase transactions are the result of Hot Stop taking phone orders for foods which are delivered by truck to the SNAP customers. Sometimes SNAP customers make very large food orders. The Appellant purchases food items from several vendors such as Sam's Club, Costo, Reidsville Wholesale, and Schuler Meats.
- The Appellant requests that FNS give Hot Stop a second chance to participate in the SNAP as he is a new business owner and any SNAP violations that may have been committed were not intentional.

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

- Four photos showing a chest freezer located in Hot Stop, a truck with coolers in the back of it, and a shelf located in the store that stocks a few staple foods; and

- Receipts from various vendors for items purchased for Hot Stop during the four month review period.

ANALYSIS AND FINDINGS

Store Characteristics

FNS authorized Hot Stop as a convenience store on November 16, 2016. The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a May 12, 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 1,000 square feet in size and it does not have a storage area outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- No optical scanner;
- Typical convenience store layout and inventory with predominantly snack foods, cakes/pastries, candy, and beverages;
- At the time of the store visit, Hot Stop did not meet the requirements for participation in the SNAP under Criterion A as it was deficient in the Dairy staple food category stocking only milk and ice cream;
- No meat/seafood specials or bundles that might sell for high prices;
- Not a WIC Program vendor and does not sell any infant foods or infant formula;
- No expensive staple foods in stock. It is important to note that the store manager indicated to the contracted Reviewer that Hot Stop sells 10 pounds of frozen chicken wings priced at \$23.75. However, there were no chicken wings in stock at the time of the store visit;
- 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;
- Limited checkout counter area and there are 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;
- No fresh or frozen unprocessed meats, poultry, or seafood;
- No deli case/section in which deli meats and cheeses are sold by the pound;

- Meat items include canned/potted meat, canned fish, meat jerky, individual pickled sausages, and individual pickled eggs;
- No kitchen in which hot and cold prepared, ready-to-eat foods that are intended for immediate consumption and require no additional preparation are prepared and sold;
- Frozen food stock includes ice cream;
- No canned fruits in stock;
- A minimal variety and amount of canned vegetables;
- No fresh produce in stock;
- Other staple foods available for purchase include such items as milk, 100% juice, canned soup, pasta, cakes/pastries, snack foods, etc.;
- Much of the remaining food stock consists of accessory foods such as candy and gum, carbonated and non-carbonated drinks, sugar, and vegetable oil; and
- A good stock of ineligible nonfood items such as tobacco products, alcohol, over-the-counter medications, paper products, household cleaning supplies, lottery tickets, health and beauty items, pet food, etc.

This documentation reflects that the firm was a typically stocked convenience store in all relevant respects. It is worth noting that the average SNAP purchase in a convenience store in Chatham County, North Carolina (the county in which Hot Stop is located) during the analysis period was \$10.78, 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.

Credit Transactions

The Appellant contends that the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Hot Stop accepting SNAP benefits as repayments on

credit accounts from seven different SNAP customers. The Appellant gave each SNAP customer a line of credit 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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.

In support of his credit extension contention, the Appellant provided FNS with a list of seven customers to whom he claims he had extended credit. Only the first names of the customers were provided. The Appellant did not provide FNS with any additional evidence or records of SNAP customer credit accounts. Therefore, FNS properly determined that the information provided by the Appellant was insufficient to support his credit extension contention for the following reasons:

- The Appellant provided no documentation to validate that Hot Stop had actual credit account documentation other than his statement of such;
- The Appellant did not provide FNS with any SNAP recipient identifiable information for the SNAP customers to whom credit had been extended. Only the first names of seven customers was provided; therefore, FNS could not review the State Administrative Terminal to validate that these SNAP customers had been extended credit during the review period;
- 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 that validate whether the alleged credit was paid off by cash, credit card 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 validates that the credit extended to each SNAP customer was done so during the four month review period; and
- No documentation was provided that validates the amount of credit that was extended to each customer during the four month review period.

In conclusion, although Hot Stop may have, on a rare occasion, accepted SNAP benefits as repayment on credit accounts, there was no evidence submitted to support the Appellant's contention that some of the irregular SNAP transactions listed in the Charge Letter are due to repayment on credit accounts.

Repeat Transactions by the Same Household

Charge Letter Attachment 1 lists 9 transaction sets (22 total transactions) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 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 Chatham County during the review period. 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 the multiple transactions made from individual benefit accounts in unusually short timeframes are the result of Hot Stop accepting SNAP benefits as repayments on credit accounts from seven different SNAP customers. The Appellant gave each SNAP customer a line of credit 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As noted above, the information provided by the Appellant in support of this contention is not sufficient to support that these transactions were due to repayments of credit accounts.

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 the Charge Letter 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. Hot Stop is not set up to provide for all of one's food needs with no fresh or frozen meats, poultry, or seafood, no frozen fruits or vegetables, no fresh produce, and it lacks an abundant depth and breadth of staple foods. The store visit observations indicate that Hot Stop does not meet the requirements for participation in the SNAP under Criterion A as the store stocked only ice cream and milk in the Dairy staple food category. The store visit observations also indicate that there is no evidence of a price advantage or custom or special services rendered at the subject store. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). In addition, Hot Stop did not carry any high priced food items at the time of the store visit so the majority of 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 Hot Stop 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 Hot Stop, where the eligible food stock is very limited, 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 11 SNAP authorized retailers located within two miles of Hot Stop that can meet the nutritional needs of SNAP customers. These authorized stores include 6 convenience stores, 3 small grocery stores, 1 medium grocery store, and 1 supermarket. In fact, the authorized store located closest to Hot Stop is a full-service supermarket. As mentioned above, SNAP customers who shopped at Hot Stop during the four 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 Hot Stop'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 Hot Stop 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.

Large Transactions

Attachment 2 of the Charge Letter cites 113 EBT transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. As noted previously, there is no indication from the store visit report that the store would be likely to have SNAP redemption patterns significantly different from similar-sized competitors offering similar food items.

The Appellant contends that excessively large purchase transactions are the result of Hot Stop taking phone orders for foods which are delivered by truck to the SNAP customers. Sometimes SNAP customers make very large food orders. The Appellant purchases food items from several vendors such as Sam's Club, Costo, Reidsville Wholesale, and Schuler Meats. In support of this contention, the Appellant provided FNS with four photos showing a chest freezer located in Hot Stop, a truck with coolers in the back of it, and a shelf located in the store that stocks a few staple foods.

However, the Appellant's contention is unsubstantiated. At the time of the store visit, the store manager noted to the contracted Reviewer when asked that Hot Stop does not take orders for foods nor does it offer home delivery to store customers. The contracted Reviewer also noted that there were no signs or flyers located inside or outside of Hot Stop which advertised that Hot Stop took phone or on-line orders for foods or that the store offered home delivery to store customers. The store manager was specifically asked by the Reviewer during the store visit to provide a list of the top three most expensive food items (over \$5.00) stocked at Hot Stop and the store manager stated that the only food item stocked at the store over \$5.00 is frozen chicken wings priced at \$23.75 for a 10 pound bag. However, there were no chicken wings in stock at the time of the store visit. The Reviewer also noted that there were no storage areas/freezers out of the public view that might stock large quantities of foods and the Reviewer confirmed this fact with the store manager. At the time of the store visit, the only frozen food item stocked at Hot Stop was ice cream.

In support of the Appellant's contention, he provided FNS with four photos showing a chest freezer located in Hot Stop, a truck with coolers in the back of it, and a shelf located in the store that stocks a few staple foods. However, as stated previously, at the time of the store visit the store manager noted to the contracted Reviewer when asked that Hot Stop does not take phone or on-line orders for foods nor does it offer home delivery to store customers. The contracted Reviewer also noted that there were no signs or flyers located inside or outside of Hot Stop which advertised that Hot Stop took phone or on-line orders for foods or that the store offered

home delivery to store customers. The Appellant provided FNS with two photos of a chest freezer which he claims he uses to stock the frozen foods that are ordered and delivered to the homes of SNAP customers.

Retailer Photo #1 of Chest Freezer:



Retailer Photo #2 of Inside of Chest Freezer:



However, the Appellant's photos appear to be contrived in an effort to support his contention. As is indicated in the below photo that was taken during the store visit, there were no frozen chicken wings, meats, or other food items stocked in Hot Stop's chest freezer.

FNS Store Visit Photo of Chest Freezer:



The Appellant also provided a photo of a truck/van with coolers in the back of it in support of his contention that the excessively large purchase transactions are the result of Hot Stop taking phone orders for foods which are delivered by truck to the SNAP customers. The Appellant contends that sometimes SNAP customers make very large food orders.

Retailer Photo #3 of Delivery Truck/Van with Coolers:



However, at the time of the store visit the store manager noted to the contracted Reviewer when asked that Hot Stop does not take phone or on-line orders for foods nor does it offer home delivery to store customers. The contracted Reviewer also noted that there were no signs or flyers located inside or outside of Hot Stop which advertised that Hot Stop took phone or on-line orders for foods or that the store offered home delivery to store customers. In addition, the Appellant provided no evidence that the truck/van in the above photo is licensed for food delivery. It also does not appear that the delivery truck has the proper equipment (i.e., freezer)

that would be required by the local health department for food delivery. It is also important to note that the coolers located in the back of the truck are not large enough to store the large amount of foods that would be required to make up the majority of the excessively large SNAP transactions that were conducted during the review period.

The store visit report and photos show that Hot Stop was stocked with a limited quantity and variety of staple foods as it stocked no fresh or frozen unprocessed meats, poultry, or seafood, no fresh produce, no frozen fruits or vegetables, no canned fruits, and only a minimal variety and amount of canned vegetables. The inventory report and photos also show no expensive eligible foods in stock that would account for these large amounts as well as showing the store has limited checkout counter space, no optical scanner, 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 11 SNAP authorized retailers located within two miles of Hot Stop that can meet the nutritional needs of SNAP customers. Several of these authorized stores are larger than Hot Stop 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 Hot Stop 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 Hot Stop 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.

FNS compared the SNAP transactions conducted at the six nearest authorized convenience stores during the four month review period to the SNAP transactions that were conducted at Hot Stop during the same timeframe. FNS' comparison indicates that Hot Stop had a higher ALERT rank than any of the comparison convenience stores. In fact, five of the six comparison stores had no ALERT rank and only one of the comparison stores barely registered any ALERT rank for the review period. Hot Stop conducted a much larger number of "multiple purchase transactions made from individual household accounts in short timeframes" as compared to the six comparison stores. In fact, none of the comparison stores conducted any "multiple purchase transactions made from individual household accounts in short timeframes" during the review period. In addition, Hot Stop conducted a much larger number of "excessively large purchase transactions" as compared to the six comparison stores.

FNS also compared the average SNAP transaction amount and total dollar volume of Hot Stop during the review period to that of the average convenience store located in Chatham County, North Carolina during the same timeframe. As is indicated in the below graph, Hot Stop (bar on left) had a much higher average SNAP transaction amount for the review period than the convenience store average in Chatham County, North Carolina (bar on right). In fact, the

average SNAP transaction amount for the subject store was 6.89 times higher than the county average. This is an indicator of trafficking.

5 U.S.C. § 552 (b)(7)(E)

The Appellant provided FNS with vendor invoices for products that were purchased for Hot Stop during the four month review period in order to help substantiate that enough staple foods had been purchased to cover/explain the questionable SNAP transactions that had been transacted at Hot Stop during the review period. FNS analyzed all of the invoices that were provided by the Appellant for January 2017, February 2017, March 2017, and April 2017. All efforts were made by FNS to separate out ineligible non-food items and include purchases of foods only. However, at times this was difficult as some of the item descriptions on the invoices were vague. In these instances, the Appellant was given the benefit of the doubt and those items were included in FNS' invoice analysis.

FNS contacted the Appellant regarding price mark-ups. The Appellant stated that he has two different mark-ups---he uses a 38% to 45% mark-up for the food delivery service and a 35% to 40% mark-up for foods stocked at Hot Stop. Based on the Appellant's information, FNS used the higher percentage of 45% in the invoice analysis to give the benefit of the doubt to the Appellant.

It is important to note that the one statement/invoice provided from Farmer Market indicated that corn, watermelon, cantaloupe, and tomatoes had been purchased for Hot Stop. However, there was no fresh produce stocked at Hot Stop at the time of the May 12, 2017 store visit. In addition, the one statement/invoice provided from Schuler Meats indicated that party chicken wings, pork chops, New York strip, and chicken breast had been purchased for Hot Stop. However, these food items were not stocked at Hot Stop at the time of the store visit. In addition, the store manager told the Reviewer during the store visit that the only food item stocked at Hot Stop that cost \$5.00 or over is frozen chicken wings priced at \$23.75 for a 10 pound bag. However, there were no chicken wings or other frozen/fresh meats in stock at the time of the store visit.

FNS contacted Shuler Meats via telephone to confirm how their products are packaged. Per a representative with Shuler Meats, their wholesale items are sold by the case or by 10 pound boxes. The representative further explained that if the food items are purchased for less than a case or four (4) 10 pound boxes, then the retailer would not get wholesale pricing and would have to purchase the food items at the retail store. She explained that wholesale items are delivered to the retail store and that Shuler Meats only accepts cash payments. FNS told the Schuler Meats representative that there was a note on the invoice that stated "Make all checks payable to Shuler Meats". The representative told FNS that the invoice most likely did not belong to Shuler Meats. The vendor representative asked for the date of the invoice (January 30, 2017) and invoice number so that she could look the invoice up on their system. The Schuler Meats representative stated that the invoice number provided to her was incorrect and that the vendor had no invoices for purchases made by Hot Stop during the month of January 2017. The vendor representative also confirmed that the only invoices she had for Hot Stop were for April 2017, May 2017 and July 2017. The vendor representative confirmed that the oldest invoice that

she had for Hot Stop was from April 2017 and that the most current invoice to date was from July 2017. Shuler Meats provided FNS with a copy of the invoice from April 2017. As is indicated below, the invoice on the left is the one provided by Schuler Meats and the invoice on the right is the one provided by the Appellant.

5 U.S.C. § 552 (b)(7)(E)

It is clear from the above invoice comparison that the invoice/statement submitted by Schuler Meats does not match the invoice provided by the Appellant for the same vendor. It is evident that the Appellant contrived the invoice from Schuler Meats in an attempt to validate that the excessively large SNAP transactions listed in the Charge Letter were for purchases of eligible staple foods. It is also important to note that the invoices/statements provided by the Appellant from Farmer Market and Shuler Meats are nearly identical. The arrows on the invoice below identify some of the “questionable” information included on the Appellant’s invoice such as spelling errors and discrepancies identified by the Shuler Meats representative. Although it is likely that the Appellant fabricated the Farmer Market statement in order to respond to the Charge Letter allegations, FNS included the Farmer Market statement in its invoice analysis.

5 U.S.C. § 552 (b)(7)(E)

FNS’ analysis of the review period invoices indicates that the majority of the items purchased for Hot Stop were snack foods, beverages, candy, ice cream and tobacco products. The invoices reflect a very typical convenience store with a typical stock of snack foods, beverages, and canned goods.

5 U.S.C. § 552 (b)(7)(E)

As can be seen in the above tables, the vendor invoices (with 45% mark-up) provided by the Appellant do not account for even half of the SNAP redemptions conducted at Hot Stop for the months of January, February, March and April 2017. Furthermore, the invoice totals also do not reflect the inevitable cash, debit, and credit card sales that took place during those months. The Appellant gave no indication of what percentage of Hot Stop’s sales were SNAP sales versus cash/debit/credit card sales. Therefore, FNS does not accept that the Appellant’s “mobile delivery service” explains even half, let alone the majority or all of the SNAP transactions that were cited in the Charge Letter.

It is important to note that even if the invoices provided by the Appellant for the four month review period showed that sufficient food inventory had been purchased 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 limited variety of stock in the store, no fresh meats, poultry, or seafood, no frozen unprocessed meats, poultry, or seafood, no frozen fruits or vegetables, no 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 Hot Stop 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 four SNAP households identified in the Charge Letter to analyze their shopping patterns at Hot Stop 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 Hot Stop often **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 a sufficient number 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.

Second Chance Requested

The Appellant requests that FNS give Hot Stop a second chance to participate in the SNAP as he is a new business owner and any SNAP violations that may have been committed were not intentional. 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 August 17, 2017 Determination Letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated July 3, 2017 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 TC Hot Stop 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

April 26, 2018