

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

Uncle Sam,

Appellant,

v.

Case Number: C0203053

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the USDA that there is sufficient evidence to support that the Retailer Operations Division properly imposed a permanent disqualification of Uncle Sam as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

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

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 November 20, 2017, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of April 2017 through September 2017. The letter noted that the penalty

for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter stated the Appellant had the right to respond to the charges within 10 days of receipt to provide explanations for the irregular SNAP transaction patterns. The letter also stated that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within 10 days of receipt under the conditions specified in 7 CFR § 278.6(i). The charge letter was delivered via UPS on November 24, 2017; however, the Appellant did not reply to the charge letter.

After considering the evidence in the case, the Retailer Operations Division issued a determination letter dated December 11, 2017. The determination letter informed the Appellant it was permanently disqualified from the SNAP in accordance with 7 CFR § 278.6(c) and 7 CFR § 278.6(e)(1). The determination letter also stated that the Retailer Operations Division considered the Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations. The Retailer Operations Division determined that the Appellant was not eligible for a trafficking CMP because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter postmarked December 14, 2017, the Appellant requested an administrative review of the Retailer Operation Division's determination. The request for administrative review was granted.

STANDARD OF REVIEW

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

CONTROLLING LAW AND REGULATIONS

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

7 U.S.C. § 2021(b)(3)(B) states, in part:

... a disqualification under subsection (a) shall be ... permanent upon
... the first occasion or any subsequent occasion of a disqualification

based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 271.2 states that the definition of “coupon” includes:

... an electronic benefit transfer card or personal identification number issued pursuant to the provisions of the Food and Nutrition Act of 2008, as amended, for the purchase of eligible food.

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means the buying or selling of ... [SNAP] benefits for cash or consideration other than eligible food

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, **evidence obtained through a transaction report under an electronic benefit transfer system....** [Emphasis added.]

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program.

7 CFR § 278.6(b)(2) states, in part:

(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 a penalty. [Emphasis added.]

SUMMARY OF CHARGES

The Appellant was charged and determined to be trafficking based on an analysis of electronic benefit transfer (EBT) transaction data from April 2017 through September 2017. This involved the following transaction patterns which are trafficking indicators:

- **Charge Letter Attachment 1:** There were an unusual number of transactions ending in a same cents value. This attachment lists 264 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 2:** Multiple consecutive purchase transactions were made too rapidly to be credible. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 3:** Multiple transactions were made from individual benefit accounts in unusually short time frames. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 4:** In a series of transactions, the majority or all of individual recipient benefits were exhausted in unusually short periods of time. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**
- **Charge Letter Attachment 5:** Excessively large purchase transactions were made from recipient accounts. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

APPELLANT'S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The store is a small neighborhood convenience store that receives a lot of repeat customers. The store is located across from an academy, between two churches, in a relatively poor neighborhood where most families use SNAP benefits.

- The purchases between 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are small purchases that include students buying snacks, drinks, candy and water. This also includes customers purchasing items such as milk and eggs. Whole number pricing is added to these items which are basic products with high demand.
- The purchases between 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are usually done by customers that come often and live in the area. Purchases in this category are rounded down to the nearest number to encourage customers to come back.
- For those purchases above 5 U.S.C. § 552 (b)(6) & (b)(7)(C), the store typically gives a five percent discount and the numbers are rounded down to the nearest whole number.
- Customers shop at random times and sometimes a line forms resulting in these types of rapid consecutive transactions. The owner is experienced at using the register and operates it faster when it's rush hour. The only exception is transactions 281 and 282 where the second transaction is a whole sale pre-order of fish that was predetermined before the purchase.
- Regarding the multiple same household transactions conducted in a short time frame, customers buy essentials and then realize they have enough to purchase more items after checking their SNAP account balance on the receipt. They will then purchase other secondary and/or specials and discounted items.
- Regarding the exhaustion of benefits, customers know how much they have in their account and will spend all their benefits before receiving their next month's allotment because they fear the Department of Transitional Assistance will reduce their benefits if they are not used monthly.
- The large dollar transactions are due to the following factors:
 - Uncle Sam is one of the few markets that sell Middle Eastern food in Worcester and central Massachusetts in general.
 - New refugees carpool to the store to purchase as much as possible because they cannot afford to go shopping daily or shop at other stores.
 - The total flagged transactions represent only about 1.42 transactions per day during a six-month period.
 - Uncle Sam provides customers with specials, discounts, and some of its customers may purchase whole sale if they need items in bulk such as frozen fish, halal meat, rice and British tea.
 - Uncle Sam also provides Middle Eastern families with special event catering for events such as weddings and funerals.
- A permanent disqualification would be devastating financially to the business and the store owner's family.

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

ANALYSIS AND FINDINGS

Authorization History

The Food & Nutrition Service (FNS) authorized Uncle Sam for the SNAP on April 22, 2013. The owner signed the SNAP application for the store on February 11, 2013 and acknowledged that the owner was aware of the SNAP regulations and understood those regulations. That application included a certification and confirmation that the owner would “accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm’s employees, paid or unpaid, new, full-time or part-time.” The violations listed on this certification include accepting SNAP benefits in exchange for cash, otherwise known as trafficking, and other violations such as accepting SNAP benefits for ineligible non-food items.

During the review period of April 2017 through September 2017, the Retailer Operations Division classified the store as a combination grocery store.

Store Visit Report

The case record documents that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a September 27, 2017 store visit conducted by an FNS contractor to observe the nature and scope of the store’s operation, stock and facilities. This information was then used to ascertain if there were justifiable explanations for the store’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Uncle Sam is approximately 450 square feet in size.
- The store had no shopping carts and no handheld shopping baskets for customer use.
- The store had one (1) cash register and one (1) point-of-sale device.
- The store did not have an optical scanner or conveyor belts at the checkout.
- There was no evidence of a wholesale business.
- The aisles were narrow and the lighting in the store was poor.
- Store personnel confirmed that there was a small food storage space of 100 square feet and that no food was stored offsite.
- Store personnel confirmed that Uncle Sam did not provide delivery services or take online or telephone orders.
- Food items generally had prices ending in x9 cents. The store did not have a special price structure such as ending most product prices 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Store personnel confirmed that the store

did not round prices up or down at the checkout.

- The store did not sell fresh meat bundles, fresh seafood specials, and/or fresh fruit and vegetable boxes.
- The checkout area consisted of a small countertop with empty space of no more than two (2) feet by two (2) feet in size. The countertop was crowded with displays of gum and candy. The very limited space for stacking food at the checkout area made it not conducive to conducting large transactions.

The SNAP eligible food stocked by the store consisted mainly of inexpensive canned and packaged goods with only a limited amount of frozen meats, frozen fish and frozen dried fruits. While the firm carried some canned and packaged goods that were marketed as Middle Eastern specialty foods, Uncle Sam did not sell fresh halal meats, or openly advertise the store as a halal store. Outside signage indicated the store sold Middle Eastern American food. The store also sold snack foods and other accessory food items such as coffee, tea, condiments, and spices. The stocked ineligible items included tobacco, health and beauty products, cleaning products and general houseware.

Store personnel confirmed that the most expensive items sold by the store were 11 pounds of dried dates at \$45.00; a package of pastry at \$29.99; frozen fish at \$14.99; and 11 ounces of kebab at \$8.99. However, the store did not appear to have a large quantity of these items in stock. For example, there were only two (2) 11-pound boxes of dried dates and the other expensive items were likewise in limited supply. Given the available inventory as noted above, there is no indication from the store visit report that the store would be likely to have SNAP transaction patterns significantly different from similar-sized competitors offering similar food items.

Same Cent Transactions

During the review period, Uncle Sam conducted 1,495 transactions **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. When such repetitive patterns are unsupported by special pricing structures they are a strong indicator of trafficking in SNAP benefits.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). Store personnel also stated during the store visit that the firm did not round prices up or round prices down to the nearest dollar. In addition, the firm cannot credibly claim it rounds down large transactions to the nearest whole dollar when other large transactions cited in the charge letter are not rounded down.

Based on the store visit report, the Appellant's food inventory contains almost exclusively inexpensive canned and packaged goods, single-serving food items and accessory foods. Due to the store's mostly low cost foods, the larger dollar transactions cited in the charge letter would normally consist of multiple food products being purchased in one transaction. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**.

Consequently, when there are a disproportional amount of transactions that end in a same cents value, it appears that these transaction amounts are contrived and therefore, in the absence of any compelling rationale to the contrary, are a strong indicator that the firm is trafficking in SNAP benefits. A preponderance of the evidence indicates that the irregular transactions cited in Charge Letter Attachment 1 are more likely than not a result of the store trafficking in SNAP benefits.

Multiple Transactions made too Rapidly to be Credible

Charge Letter Attachment 2 lists 23 pairs of transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The second transaction in each set was a large dollar transaction which greatly exceeded the average transaction at a combination grocery store in Massachusetts. Rapid and consecutive transactions conducted at a store without the technology and infrastructure to process such transactions are a trafficking indicator.

The Appellant contends that its customers shop at random times and sometimes a line forms resulting in these types of rapid consecutive transactions. Allegedly, the owner is experienced at using the register and operates it faster when it's rush hour. The only exception is transactions 281 and 282 where the second transaction is a whole sale pre-order of fish that was predetermined before the purchase.

The average SNAP transaction for a combination grocery store in Massachusetts during the review period was \$23.52. **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The Retailer Operations Division considered this to be a strong trafficking indicator because the second purchase items would have to be transported to the limited checkout area, keyed at the register, a card swiped, a PIN entered, an approval indicated and a receipt printed. This process would also include several items being bagged and removed from the counter before the next transactions could be initiated. As the checkout and counter space is very limited, it is unlikely that the store could process such large food purchases in such a short time frame. The fact that the store did not have an optical scanner would increase the amount of time it would take to check-out as prices would have to be determined for the merchandise and then entered in the register before the item could be bagged.

Despite the store's limitations in counter space and infrastructure, it was rapidly processing consecutive SNAP transactions which included an excessively large transaction atypical of a SNAP combination grocery store in Massachusetts. The Appellant's explanation of how it could conduct such rapid and consecutive transactions is not credible. Based on a 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.

Multiple Transactions by the Same Household within a Short Time Period

SNAP households have no limit on the number of times they may use their SNAP cards or how much eligible food they may purchase. However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a combination grocery store's stock and facilities and are thus indicative of trafficking.

Violating stores often conduct multiple split transactions from the same household account as a method to avoid the detection of single high dollar transactions that cannot be supported by the retailer's food inventory and infrastructure.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). It is not credible that a combination grocery store would have suspicious SNAP transactions greater than a supermarket or superstore. It is even less likely that these excessively large transactions would be conducted multiple times by the same household during a short time period.

The Appellant contends that its customers will buy essentials and then realize they have enough to purchase more items after checking their SNAP account balance on the receipt. Allegedly, they will then purchase other secondary and/or specials and discounted items. It is true that customers sometimes forget an item or see something at the checkout and decide to purchase it after they already completed a transaction. However, in such instances, it is reasonable to expect that the subsequent purchase will be for a nominal amount because it is quite rare to find very expensive items positioned at the checkout area, especially in smaller stores. However, the second or subsequent purchase amounts shown in the charge letter generally exceed what would be normal for any nominal or afterthought purchase. In some cases the amounts of subsequent transactions equaled or exceeded the preceding transaction amount. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

The store visit pictures show that is unlikely that SNAP customers would want to shop at this store multiple times during a short time frame, or purchase such a large volume of items. In addition, the store's small checkout area and very limited counter space makes it unsuitable for conducting large transactions. The store also had no shopping carts or shopping baskets for transporting food within the store. 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.

Exhaustion of Benefits

Charge Letter Attachment 4 lists 28 sets of 42 transactions

5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E). SNAP recipients do not normally exhaust or nearly exhaust their benefits in a single large transaction or through multiple transactions within a short period of time.

The Appellant contends that customers know how much they have in their account and will spend all their benefits before receiving their next month's allotment because they fear the Department of Transitional Assistance will reduce their benefits if they are not used monthly. Even assuming that the store customers have this misunderstanding, it does not explain the irregular transaction patterns cited in the charge letter. The charge letter shows that 23 of the 28 sets of transactions occurred in the first half of the month including twelve (12) transactions that took place in the first week of the month. It is unlikely that customers would be exhausting their benefits so early in the month at a single store even if they had a fear that the state agency would reduce their monthly allotment if benefits remained unspent.

A government report on SNAP shopping patterns indicates that after the first day of benefit issuance, on average, 80 percent of a household's allotment remains unspent. Even after seven days, 40 percent of benefits still remain unspent. It takes two weeks to deplete 80 percent of one's benefits, and three weeks to deplete 90 percent. Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefits in a single day at one store. Depleting one's entire allotment in a single day, or in a single large transaction, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households.

In addition, the Appellant does not explain how the store is conducting transactions that are many times higher than a SNAP authorized Massachusetts supermarket or superstore. Based on a preponderance of the evidence this irregular transaction pattern is more likely than not the result of trafficking in SNAP benefits.

Excessively Large Transactions

SNAP households have no limit on the amount of eligible food they may purchase (subject to the remaining balance on the card). However, the SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of a combination grocery store's stock and facilities and are thus indicative of trafficking.

Charge Letter Attachment 5 cites 258 SNAP transactions
5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

The substantial number of high dollar purchases atypical of a SNAP authorized combination grocery store calls into question the legitimacy of these transactions. 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 states that the total flagged transactions represent only about 1.42 transactions per day during a six-month period. Regarding this contention, violating firms often conduct largely legitimate transactions while also conducting trafficking transactions with a smaller number of trusted households. To state that only a limited number of households may have conducted irregular and abnormal SNAP transactions does not offer an explanation for the transactions cited in the charge letter. In the absence of a credible explanation for the irregular transaction patterns, the most likely explanation is that they are a result of the Appellant firm trafficking in SNAP benefits.

The Appellant states that Uncle Sam also provides Middle Eastern families with special event catering for events such as weddings and funerals. However, during the store visit, store personnel indicated that the store does not provide delivery service, telephone or online orders.

The Appellant states that Uncle Sam provides customers with specials, discounts, and some of its customers may purchase wholesale if they need items in bulk such as frozen fish, halal meat, rice and British tea. However, the store visit report and pictures do not show that Uncle Sam had sufficient stock to support significant bulk sales that would explain the excessively large transactions cited in the charge letter.

The store visit report indicates that Uncle Sam sells both Middle Eastern food and food typical of traditional American grocery stores. The Appellant states that Uncle Sam is one of the few markets that sell Middle Eastern food in Worcester and central Massachusetts in general. Allegedly, new refugees carpool to the store to purchase as much as possible because they cannot afford to go shopping daily or shop at other stores. It is true that sometimes a store may have higher than normal SNAP transactions due to the lack of access to other SNAP authorized stores in the area or if there are no other stores selling the same type of specialty or international food. However, the Retailer Operations Division determined that there are 36 surrounding SNAP authorized stores within a one-mile radius of Uncle Sam which are comparable or larger in size. Three (3) of these stores also sell international food and these stores were frequented by some of the same households cited in the charges. Two (2) additional stores selling international food that were outside of a one-mile radius of Uncle Sam were also frequented by households that appear in the charge letter. These stores generally have a larger variety and quantity of staple food and international food than Uncle Sam. One (1) store was a SNAP authorized superstore

that sells large quantities of halal meats and fresh produce. Therefore, a lack of access to other stores does not appear to explain the excessively large transactions at Uncle Sam.

Lastly, the case record documents that the Retailer Operations Division conducted a detailed analysis of four (4) households identified in the charge letter to analyze their shopping patterns at Uncle Sam compared to their shopping patterns at other SNAP authorized stores. All of these households had access to, and shopped at supermarkets and superstores including stores that sold halal meat and fresh produce. However, despite this access to better stocked stores, these sampled households often conducted excessively large transactions at Uncle Sam on the same day or within a few days of shopping at these other stores. It is highly unlikely that a combination grocery store would have legitimate SNAP transactions comparable or larger than these SNAP authorized supermarkets and superstores with similar food items.

In summary, the store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding the average SNAP transaction amount 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 shopping baskets support the Retailer Operations Division determination. 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 a preponderance of the evidence, the irregular transaction patterns cited in Charge Letter Attachment 5 are more likely than not the result of trafficking in SNAP benefits.

Hardship to Firm

The Appellant states that a permanent disqualification will be devastating financially. With regard to this contention, it is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in the SNAP. However, there is no provision in the SNAP regulations for a waiver or reduction of an administrative penalty assessment on the basis of possible economic hardship to either the ownership personally or the firm resulting from the imposition of such penalty. To allow store ownership to be excused from assessed administrative penalties based on a purported economic hardship would render virtually meaningless the enforcement provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA.

Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with program regulations, but also to those retailers who have been disqualified from the program in the past for similar violations. Therefore, Appellant's contention that the firm may incur economic

hardship based on the assessment of an administrative penalty does not provide any valid basis for dismissing the charges or for mitigating the penalty imposed.

CIVIL MONEY PENALTY

The Appellant did not timely request consideration for a trafficking CMP in lieu of a permanent disqualification under 7 CFR 278.6(i) even though it was informed of the right to do so in the charge letter. SNAP regulations at 7 CFR § 278.6(b)(2)(iii) states that “if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility **within the 10 days** specified in § 278.6(b)(1), the firm **shall not be eligible** for such a penalty.” [Emphasis added.]

Even if a timely request had been submitted, the Appellant would likely not have been eligible for a trafficking CMP in lieu of disqualification because there is insufficient evidence to demonstrate that the firm had established and implemented an effective SNAP compliance policy and program prior to the violations. Therefore, the Retailer Operations Division’s decision not to impose a trafficking CMP in lieu of disqualification is sustained as appropriate pursuant to 7 CFR §278.6(i).

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify the retailer. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. 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.

In the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as determined by the Retailer Operations Division. Based on the discussion above, the decision to impose a permanent disqualification against Uncle Sam, Appellant, is sustained.

RIGHTS AND REMEDIES

Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) addresses 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.

RONALD C. GWINN
Administrative Review Officer

March 19, 2018