

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

**USA Grocery #2,**

**Appellant,**

**v.**

**Case Number: C0201903**

**Retailer Operations Division,**

**Respondent.**

**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification against the USA Grocery #2 (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with Title 7 of the Code of Federal Regulations (CFR) § 278.6(a), (c) and (e)(1)(i), when it imposed a permanent disqualification against Appellant on August 31, 2017.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated August 21, 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 July 2017. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil

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

Appellant responded to the charges in a letter dated August 28, 2017, and submitted via fax on August 30, 2017. The Retailer Operations Division notified Appellant in a letter dated August 31, 2017, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also stated that Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated “. . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program.”

By letter dated September 7, 2017, Appellant appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted. Subsequent correspondence dated October 10, 2017, was received from Appellant.

### **STANDARD OF REVIEW**

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

### **CONTROLLING LAW**

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

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

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

7 CFR § 278.6(e)(1)(i) reads, in part, “FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2.” Trafficking is defined, in part, in 7 CFR § 271.2, as, “The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . .” Trafficking is further defined, in 7 CFR § 271.2, to include “(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.”

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

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

### **SUMMARY OF THE CHARGES**

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

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

### **APPELLANT’S CONTENTIONS**

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

- The owner just received the letter regarding the violations and it is disturbing since she has been doing this business since May 2013 and in those 4.5 years never did anything wrong. The owner was busy opening a restaurant the last couple of months and could not

pay attention to the business. The problems began when a new employee was hired about two months ago [June 2017]. He seemed alright, but the owner started to hear complaints about him afterwards. The owner doesn't have the system like USDA to figure-out about Food Stamps issues right away;

- The owner has reviewed the paperwork and it seems like there maybe are a few suspicious transactions in the last couple of months and all occurred during the shifts of the new employee. The owner talked to him and he denied trafficking or doing anything wrong. The owner didn't know what to do so he was fired and hopefully everything will be alright from now on;
- The store is in an area where everyone depends on Food Stamps and one card is used by several family members. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Even if three or four family members come in one car, they don't come into the store together, they shop one by one. The owner cannot stop them from using their card multiple times even though some are big in amount and done in a short period of time. The owner now suspects that some of these transactions do not make any sense, but these are few and are on the first three pages of the letter;
- All of the other big transactions in the letter are good. They may look like they are in series, but are in different months, days, and times;
- Suspension of EBT based on computer data is not justified. Since the September 18, 2017, letter did not have any guidelines on what proof USDA is asking for, the owner has gathered some information to help state her case;
- Cash register receipts are printed for every transaction including credit, debit, and EBT. Receipts are trashed after a few months, but quite a few register and credit/debit card and cash receipts are attached to show that the transactions are legit. These include a few big and repeated transactions that are very normal in this neighborhood because of multiple family members using the same card;
- A few purchase invoices are submitted to show the pattern of purchases. These are not normally saved as the owner did not know she would need them;
- Pictures of the big grocery items are submitted that include formula, rice, juices, oil, and other groceries in big family packs. Some of the items are kept behind the counter because of their value and high cost 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The business also sells frozen food and meat which can make sales go high;
- Testimonials from a few of the regular customers are submitted testifying to their making big purchases and buying groceries on repeat trips;
- The owner thought she would get a fair chance to represent her case, but it seems like the case worker had already made up her mind since she mailed the disqualify letter as soon as the owner faxed her response saying she did not present enough evidence. The owner didn't know what kind of evidence and the case worker didn't tell her what to send in order to prove she was not doing anything wrong. The owner would like to know what kind of evidence she should send and also asks that her history be checked as well;
- The multiple transactions are very normal especially when there is a party and one card has been used by multiple household members. T5 U.S.C. § 552 (b)(6) & (b)(7)(C);
- The owner does not think that computer-based data is enough to disqualify her. Especially when she has been doing a clean business for 4.5 years and all of a sudden this happened because of one of her employees. The owner is not even sure what he did, but can see a few suspicious transactions in the last couple of months; and,

- The submitted information shows that the owner is not doing anything illegal in the store and that she has been doing business at this location for 4.5 years supports her credibility. If the owner wanted to do trafficking, she would have done it when she started the business, not wait 4.5 years to start. The employee who was suspected has been fired and the owner has trained the rest of the employees to make sure this won't happen again. The owner should not be punished for what someone else was doing. The owner has been doing this for 4.5 years without any EBT or tax issues and is now getting into trouble because of an employee that has already been let go. The owner hopes she will not be punished for something someone else was doing. It is not easy to spot anyone doing wrong with EBT right away and the owner will make sure this does not happen again.

Appellant submitted cash register receipts, inventory purchase receipts/invoices, photographs, and customer testimonials in support of these contentions.

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

## **ANALYSIS AND FINDINGS**

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

### **Store Background and FNS Store Visit**

The FNS initially authorized the Appellant business on April 4, 2013, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a July 13, 2017, store visit conducted by a FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant's store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a small store offering a very limited quantity and variety of staple foods and carrying no unique items or offering any distinctive services.
- The business stocked typical mainstream American brand products and did not offer any ethnic foods.
- Exterior signage advertised: check cashing, wireless cell phone store, grocery, propane tanks, money orders, and hot food (burgers, biscuits, pizza, and hot wings). No hot food

for sale was visible in the store or noted by the contracted review on the store visit report.

- There were no shopping carts or handheld baskets for customer use seen during the visit making it difficult for customers to carry large amounts of food to the checkout.
- The checkout area consisted of a plastic security barrier with two small pass through trays. There was a shelf in front of the checkout area that was approximately one foot deep containing displays and a PIN pad. The narrow width of the checkout counter shelf combined with the plastic security barrier would make it problematic to process large orders.
- The checkout area had one cash register, one POS terminal, and no scanner as evidenced by the store visit report and photographs.
- No food packages, bundles, case sales, bulk products, or other sales were evident that would explain the unusual transactions and no SNAP eligible cased items were available for sale.
- The store had a very limited stock of staple foods that consisted of many single serving and pre-packaged items with the majority of inventory in accessory foods (primarily soda, candy, and other drinks), snacks, and ineligible items.
- The store was noted to be deficient in the Dairy category stocking no dairy products.
- The store had no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/poultry), no packaged lunch meats, no bacon, no hot dogs, no deli meats or deli cheeses, no frozen entrees, no frozen dinners, no fresh or frozen fruits or vegetables except for four overly ripe bananas, no nuts, no cocoa, no tea, minimal quantities and varieties of soups, a very limited quantity and variety of canned and packaged staple food items, no flour, no rice, no bread/rolls/tortillas, very limited dry pasta/noodles, no eggs, no fresh milk, no milk drinks, no canned milk, no butter/margarine, no packaged cheeses, no yogurt, no sour cream, only one container of coffee, a very limited quantity and variety of baby foods, no infant formula, and no expensive eligible food items.
- Ineligible items included: tobacco, alcohol, lottery, gasoline, household products, paper products, pet products, automotive products, health and beauty items, ATM, diapers, electronics accessories, watches, jewelry, clothing, and gambling machines while accessory foods included: candy, spices, condiments, coffee, and carbonated/uncarbonated drinks.
- Signage in the store was in English and there were no SNAP posters (anti-fraud, eligible items, reporting trafficking, etc.) visible in the store.
- Most food items were priced with all visible staple food prices ending in .x9 cents except for a very limited number of items such as snacks or candy priced at .10 cents, .50 cents, \$1.00, two for \$3.00 and two or three for \$1.00. Comments on the FNS store visit report by the contract reviewer specifically state that most food prices end in .x9 cents. A price ending in .x9 cents is the most common pricing structure for stores of this type.
- The FNS store visit report listed the most expensive items **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** for sale in the store as being only an 11.3 ounce container of coffee priced at \$5.39 and had no other items priced **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** higher. This listing of the most expensive items was provided by a store employee during the store visit and is supported by the store visit photographs.

- The store was not a WIC vendor. While the business did stock eight containers of baby apple sauce, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers at WIC vendors, not SNAP EBT.
- The business's hours of operation were open 24/7 as confirmed by a store employee during the store visit.
- The FNS store visit report and photographs showed many empty or marginally stocked shelves, racks, and coolers as well as dusty food items all indicative of a slow turnover of stock.
- The quantity and variety of the store's staple food inventory was significantly less than that seen during the previous FNS store visit on March 25, 2013.

### **Multiple transactions in unusually short time frames**

This Attachment documents 65 individual transactions in 23 sets of two or more transactions conducted by 20 different households in a short period of time.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The dollar amounts of the subsequent transactions in each set are all substantial and they nearly equal or exceed the dollar amount of the initial transaction in all of the 23 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). One transaction set is comprised of five individual transactions, four sets are comprised of four individual transactions, eight sets are comprised of three individual transactions, and the remaining 10 sets are comprised of two individual transactions. It is not a usual shopping pattern to see so many purchases, in a short period of time, by the same recipients as documented in this Attachment.

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

Appellant contends the multiple transactions are because the store is in an area where everyone depends on Food Stamps and one card is used by several family members. They all come one after another and they don't have rides 5 U.S.C. § 552 (b)(6) & (b)(7)(C). so multiple transactions are very common and occur on a daily basis. Even if three or four family members come in one car, they don't come into the store together, they shop one by one. The multiple transactions are very normal especially when there is a party and one card has been used by multiple household members. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The owner cannot stop them from using their card multiple times even though some are big in amount and done in a short period of time. The owner now suspects that some of these transactions do not make any sense, but these are few and are on the first three pages of the letter.

SNAP households have no limit on the number of times they may use their benefits or the dollar value of eligible food they may purchase. The SNAP transactions listed in this Attachment are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are thus indicative of trafficking. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Appellant's claim that three or four family members may arrive together in the same car, but will shop separately makes no sense as this would require family members to wait several hours for all members to complete their transactions based on the patterns in this Attachment. It is certainly not unusual for a small

number of SNAP households to conduct multiple transactions in a short period of time. However, it is unusual that the subsequent transaction dollar amount is for a substantial amount in all of these transaction sets and that they nearly equal or exceed the dollar amount of the first transaction in all of the 23 sets. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These multiple transactions suggest that the amounts were contrived by store employees trying to avoid suspiciously high transactions that would be indicative of trafficking by breaking them into multiple, smaller amounts. Additionally, even the owner's statement that she reviewed the paperwork and there were a few suspicious transactions in the last couple of months combined with the statement that she suspects some of these transactions do not make any sense further support the FNS charges of trafficking at the Appellant business.

An analysis of the shopping patterns for the 20 households listed in this Attachment shows that all of these households have ready access to transportation as evidenced by their shopping at a variety of other larger food stores located nearby and at a distance from Appellant's location with 19 of the 20 households shopping at a large number of super stores and supermarkets. This analysis further shows that 15 of the 20 households conducted 11 or fewer transactions at the Appellant business during the four month period under review with seven households conducting four or fewer transactions indicating that 75 percent of the households in this Attachment are not regularly shopping at the Appellant business and would therefore not be likely to conduct multiple transactions totaling to large dollar amounts in short periods of time. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

FNS records further show there are three supermarkets located within 1.81 miles of Appellant's location that would offer greater quantities and varieties of food items at lower prices than would be found at a poorly stocked convenience store. The closest supermarket is located only 0.09 miles or 475 feet away from Appellant's location thereby refuting the owner's contention that there are no big stores in the area. That the owner submitted receipts from this supermarket that were for inventory purchases for the Appellant business further supports that shopping at the nearby supermarket would be a better choice for SNAP households. The Appellant business is located on Houston Street that has fixed route bus service through the Macon Transportation Authority that would facilitate shopping at other stores. Given the proximity of these larger stores, there is no reason for the attraction to the Appellant business and the volume of violative transactions, especially the large dollar transactions. Appellant has failed to provide any viable explanations for the irregular shopping patterns exhibited by the households in this Attachment. Also, no explanation or rationale has been offered by Appellant as to why households that are regularly shopping at much larger stores offering a greater quantity and variety of SNAP eligible food stock at lower prices and who apparently have no transportation limitations would be conducting multiple, high dollar value transactions at a convenience store that offers a very limited selection of staple food items and has no shopping carts that would be needed for the large transactions in this Attachment. Common sense dictates that it is improbable that SNAP households, with limited cash resources, would choose to shop at the Appellant business when their SNAP eligible food needs could be met at any of the larger stores they are already regularly shopping at and therefore it is more likely than not that these households were trafficking SNAP benefits at the Appellant business.



There may be legitimate reasons why a SNAP recipient might return to a store during a short period of time, but the examples in this Attachment indicate a series of SNAP purchases that total to large dollar amounts. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

### **High Dollar Value Transactions**

This Attachment lists 539 individual EBT transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The substantial number of high dollar transactions is atypical for a poorly stocked convenience store of this size and calls into question the legitimacy of these transactions. The SNAP transactions listed in this Attachment are all substantially higher than the average SNAP transaction amount of \$6.46 for this store type in Bibb County. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is unusual and indicative of trafficking.

The record shows that within a one mile radius of Appellant's store there are 16 SNAP authorized retailers including: one supermarket located 475 feet from the Appellant business, one seafood specialty store, three combination grocery stores, and 11 convenience stores. There are two additional supermarkets located 1.2 and 1.81 miles away as well as a large grocery store located 1.27 miles away. The evidence under review shows that SNAP households shopping at the Appellant business are also shopping at other nearby stores, as well as at many full-line supermarkets and super stores, located nearby as well as at a distance from Appellant's location that offer a greater quantity and variety of SNAP eligible foods items for better prices than customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores that would be better shopping options for consumers. Based on these shopping patterns, transportation does not appear to be an issue for these households. Yet, these recipients continue to shop and spend suspicious high dollar amounts at the Appellant business, where the eligible food stock is limited, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of their purchases at larger food stores.

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

This store also had irregular SNAP transaction data as compared to like type convenience stores in Bibb County. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). While there are normally few transactions in the higher dollar ranges, most stores of this type do still have a small number of them indicating

that the Appellant business may be dividing larger trafficking transactions into smaller ones as previously discussed. Dividing large transactions into a series of smaller transactions has long been a technique used by retailers to avoid suspicion. None of Appellant's contentions explain these unusual and suspicious differences.

Appellant contends that all of the other big transactions in the letter are good. They may look like they are in series, but are in different months, days, and times. Appellant submitted testimonials from a few of the regular customers testifying to their making big purchases and buying groceries on repeat trips as well as pictures of the big grocery items that include formula, rice, juices, oil, and other groceries in big family packs. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The business also sells frozen food and meat which can make sales go high. Cash register receipts are printed for every transaction including credit, debit, and EBT. Receipts are trashed after a few months, but quite a few register and credit/debit card and cash receipts are attached to show that the transactions are legit. These include a few big and repeated transactions that are very normal in this neighborhood because of multiple family members using the same card. Also, a few purchase invoices are submitted to show the pattern of purchases. These are not normally saved as the owner did not know she would need them;

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

The review of the customer testimonials submitted by the Appellant shows that all but three are on prepared, printed templates with blank spaces for the date, name, telephone number, and signature. None contain the household's SNAP account number, SNAP EBT card serial number, or address thereby making it impossible to connect any of these testimonials to actual SNAP transactions occurring during the review period. The review also noted that four testimonials cite buying "baby formula milk" at the Appellant business. As previously stated, on the day of the FNS store visit the Appellant business stocked only eight containers of baby food (apple sauce) and did not have any infant formula or other baby foods. Additionally, most SNAP households with infants or small children are WIC participants and therefore would be purchasing these products using WIC vouchers at WIC vendors, not SNAP EBT. For a SNAP recipient to use their very limited SNAP benefits to purchase expensive baby foods or formula when they could receive WIC vouchers for them makes no sense. All of the printed statements also include wording that there is no big grocery store in the area yet facts show a supermarket located only 475 feet from Appellant's location that is even on the same side of the street. The lack of pertinent information on the testimonials combined with statements that make no sense or are not true indicate that the testimonials were fabricated by the Appellant in an attempt to avoid permanent disqualification.

The review of the register and credit/debit card and cash receipts submitted by the Appellant shows many purchases of SNAP ineligible items such as tobacco, money orders, beer, and hot food. It was noted that the cash register receipts for these transactions contained much more detailed descriptions of the items purchased than did the EBT cash register receipts that list all items purchased as simply “EBT”. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). As such, the receipts provided are insufficient to explain the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant business during the review period.

Appellant provided some purchase invoices to show purchase patterns at the business. An analysis of these invoices and receipts for inventory purchases showed that 58 were either dated outside of the review period, were not legible, had no vendor name, had no date, or were purchased using SNAP EBT cards and were therefore excluded from the analysis. The largest dollar value invoices were from liquor and alcohol vendors while the majority of invoices were from Serena Wholesale and were for tobacco products, health and beauty items, clothing, household products, cleaning products, automotive products, beverages, candy, and snacks. The only meat purchase invoices were for jerky and canned/potted meats; there were also no invoices for large bags of rice, infant formula, or frozen foods despite Appellant’s contentions that the business sells these items. The invoices provided match the store inventory taken during the FNS store visit showing a poorly stocked convenience store with very limited staple foods for sale. Since the invoices provided did not account for all of the inventory purchases made during the review period, there is insufficient evidence to determine if the inventory purchases were sufficient to support SNAP redemptions during the review period. Lastly, Appellant submitted several receipts showing that SNAP recipient benefits were being used to purchase inventory for the business. The reselling of items purchased using SNAP benefits is defined as trafficking by SNAP regulations at 7 CFR § 271.2 therefore Appellant was trafficking.

Information obtained during the FNS store visit on July 13, 2017, shows that the Appellant business offers a very limited quantity and variety of SNAP eligible staple food items, many accessory foods, and many ineligible items. Since the Appellant business carries no fresh unprocessed meats or seafood, no frozen unprocessed meats or seafood, a very limited quantity and variety of processed meats and seafood (canned meat/poultry), no packaged lunch meats, no bacon, no hot dogs, no deli meats or deli cheeses, no frozen entrees, no frozen dinners, no fresh or frozen fruits or vegetables except for four overly ripe bananas, no nuts, no cocoa, no tea, minimal quantities and varieties of soups, a very limited quantity and variety of canned and packaged staple food items, no flour, no rice, no bread/rolls/tortillas, very limited dry pasta/noodles, no eggs, no fresh milk, no milk drinks, no canned milk, no butter/margarine, no packaged cheeses, no yogurt, no sour cream, only one container of coffee, a very limited quantity and variety of baby foods, no infant formula, and offers no expensive eligible food items, these patterns are deemed to be suspicious. The fact that: tobacco, alcohol, lottery, gasoline, household products, paper products, pet products, automotive products, health and beauty items, ATM, diapers, electronics accessories, watches, jewelry, clothing, and gambling machines are not eligible for purchase using SNAP benefits also provides no justification for the high transaction amounts. The business carries no special foods or offers any unique services that are not also available at other nearby grocery stores making it unlikely that SNAP recipients with available transportation would make this business their grocery store of choice.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The photographs of store stock submitted by Appellant are not supported by the FNS store visit inventory report or photographs therefore it is more likely than not that these photographs were fabricated in an attempt to justify the large transactions in this Attachment.

Increasing food prices make it even more unlikely that SNAP recipients, with limited food benefits, would want to spend a considerable part of their benefits in a convenience store that does not address all of their food shopping needs when they are already shopping at larger, fully-stocked stores that would offer a greater variety of foods at lower prices. Many of these stores would also offer store brand products at lower prices, offer weekly specials, and have shopping carts and checkouts with scanners and conveyor belts to facilitate processing purchases quickly. The Appellant business has an extremely small checkout area, no shopping carts, and no handbaskets thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Accordingly, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of many carts and thus more likely the amounts were contrived.

It was further noted that SNAP redemptions at the Appellant business fluctuated dramatically following the FNS store visit on July 13, 2017. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). It appears as though Appellant, realizing the business might be losing its SNAP license, was attempting to maximize profits. A pronounced fluctuation in SNAP transactions immediately following the FNS store visit is a clear indication of trafficking since, if trafficking were not occurring, there would be no abnormal fluctuations in redemption amounts.

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

### **Other Contentions**

The owner does not deny that violations occurred based on her statement that she reviewed her paperwork and found a few suspicious transactions in the last couple of months and suspects that some of the multiple transactions also do not make any sense. These occurred while the owner was busy opening a restaurant the last couple of months and could not pay attention to the business. The owner attributed these transactions to a new employee that she has since fired. The owner also contends that suspension of EBT based on computer data is not justified. Especially when she has been doing a clean business for 4.5 years and all of a sudden this happened because of one of her employees. The owner is not even sure what he did, but can see a few suspicious transactions in the last couple of months. The submitted information shows that the owner is not doing anything illegal in the store and that she has been doing business at this location for 4.5 years supports her credibility. If the owner wanted to do trafficking, she would have done it when she started the business, not wait 4.5 years to start. The employee who was suspected has been fired and the owner has trained the rest of the employees to make sure this won't happen again. The owner should not be punished for what someone else was doing. The owner has been doing this for 4.5 years without any EBT or tax issues and is now getting into trouble because of an employee that has already been let go. The owner hopes she will not be

punished for something someone else was doing. It is not easy to spot anyone doing wrong with EBT right away and the owner will make sure this does not happen again.

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 within the authority of this review to consider what subsequent remedial actions may have been taken or will be taken in the future so that a store may begin to comply with program requirements. There is no provision in the SNAP regulations for waiver or reduction of an administrative penalty assessment on the basis of corrective actions implemented subsequent to investigative findings of program violations. Therefore, while the owner has trained employees and will make sure this doesn't happen again are positive steps, they do not provide any valid basis for dismissing the charges, or for mitigating the penalty imposed. While store ownership may or may not have personally conducted the violative transactions, SNAP rules and regulations state that regardless of whom the ownership of a store may utilize to handle store business or their degree of involvement in store operations, the ownership is accountable for the proper training of staff and the monitoring and handling of all SNAP benefit transactions. The owner agreed to these rules and regulations when she signed the SNAP retailer application form in 2013. The ownership remains liable for all violative transactions handled by store personnel, whether paid or unpaid, new, full-time or part-time and is also responsible for all SNAP transactions at the firm regardless of the amount of time the owner is present at the subject firm. Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. Lastly, while Appellant claims that the employee responsible for these transactions was fired, an examination of SNAP transactions for the month of August 2017 at the Appellant business shows the same questionable and unusual patterns of SNAP transactions indicative of trafficking were still evident thus calling into question the legitimacy of Appellant's allegations.

The issue under review involves a charge of trafficking SNAP benefits based on EBT transaction data. EBT transaction data is covered in SNAP regulations at 7 CFR § 278.6(a) and is addressed below. Trafficking is always considered to be the most serious violation even if it is a first offense therefore a temporary suspension or lesser penalty would not be applicable. SNAP regulations at 278.6(e)(1) clearly state that, "FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2." SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . ." SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, that "FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an electronic benefit transfer system . . ." In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Appellant business during the period under review. This firm was selected as a result of a series of complex algorithms that make numerous data

comparisons with other like type firms during the period under review. All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. This investigative process included a detailed examination of information obtained from various sources, including, but not limited to the inventory report and photographs from the FNS store visit on July 13, 2017, a transaction comparison and analysis of like type and larger stores, and analysis of shopping patterns for recipient households conducting transactions at the Appellant business during the review period. This analysis also included a review of the business to ensure its store classification was correct and the data comparisons with like type firms valid. Additionally, there are nearby like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking. There is also no regulatory requirement that trafficking disqualifications be based solely on on-site undercover operations.

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

Additionally, as previously discussed, the fact that Appellant submitted several receipts showing that SNAP recipient benefits were being used to purchase inventory for the business to resell also constitutes trafficking as defined by SNAP regulations at 7 CFR § 271.2.

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

### **CIVIL MONEY PENALTY**

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

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

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

### **CONCLUSION**

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

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

## **RIGHTS AND REMEDIES**

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

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

ROBERT T. DEEGAN  
Administrative Review Officer

January 19, 2018