

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

Wanda Deli & Supermarket,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0215124

FINAL AGENCY DECISION

It is the decision of the USDA that the record indicates that Wanda Deli & Supermarket, (hereinafter Appellant) committed violations of the Supplemental Nutrition Assistance Program (SNAP). There is sufficient evidence to support a finding that the permanent disqualification from participation as an authorized retailer in the program, as initially imposed by the Retailer Operations Division was appropriate.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(c) and (e)(1) in its administration of the SNAP, when it assessed a permanent disqualification against Appellant by letter dated March 18, 2019.

AUTHORITY

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

CASE CHRONOLOGY

In a letter dated February 19, 2019, 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 August 2018 through January 2019. 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 10 days of receipt under the conditions specified in 7 CFR § 278.6(i).

The record reflects that Appellant's counsel provided a Third Party Representation document but did not provide a response to the charge letter dated February 20, 2019. After giving consideration to the Appellant's failure to respond to the charge letter and evidence of the case, Retailer Operations Division issued a determination letter dated March 18, 2019. This letter informed ownership that they were permanently disqualified from the SNAP in accordance with Sections 278.6(c) and 278.6(e)(1) of the SNAP regulations. The letter also states that Retailer Operations considered Appellant's eligibility for a trafficking civil money penalty (CMP) according to the terms of Section 278.6(i) of the SNAP regulations. However, Retailer Operations Division determined that Appellant was not eligible for the CMP because it failed to submit sufficient evidence to demonstrate that Appellant had established and implemented an effective compliance policy and program to prevent violations of the SNAP.

In a letter dated March 26, 2019, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. The appeal was granted.

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 an 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 & Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(a) (c) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store in the event that personnel of the firm have engaged in trafficking SNAP benefits.

7 CFR § 278.6(a) states, *inter alia*, that "FNS may disqualify any authorized retail food store...from further participation in the program if the firm fails to comply with the Food and Nutrition Act of 1977, 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(c) reads, in part, "*Review of Evidence*. The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1)...the determination shall inform such a firm

that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS...”

7 CFR § 278.6(e)(1) reads, in part, “FNS shall disqualify 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 or selling of SNAP benefits for cash or consideration other than eligible food.”

7 CFR § 271.2 states in part that, “Eligible foods mean: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption.”

SUMMARY OF THE CHARGES

The charges on review were based on an analysis of SNAP electronic benefit transfer (EBT) transactions dated during the four month period of August 2018 through January 2019. This involved two patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from the accounts of individual SNAP households within a set time period.
2. Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

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.

APPELLANT’S CONTENTIONS

The Appellant, through counsel, made the following summarized contentions in its response to the permanent disqualification letter issued by Retailer Operations Division, and its request for administrative review, in relevant part:

1. Respondent respectfully submits that there is no evidence of trafficking and that the activity alleged by FNS does not constitute trafficking as the term is defined by the SNAP regulations. The definition does not include “unusual, irregular and inexplicable activity.” Likewise, the definition does not include the additional allegations of “multiple EBT transactions made from accounts of individual SNAP households within a set time period” and “transactions that are large based on observed store recorded food stock.” The allegations simply do not rise to the level of trafficking as the term is defined by Section 271.2.
2. The multiple transactions are nothing more than a product of the supermarket’s location and clientele. Many of the customers do not drive and therefore make multiple trips to the supermarket per day. These customers purchase their groceries in multiple, smaller transactions which enables them to carry the groceries home in several trips.
3. The alleged large transactions are not large based on the supermarket’s inventory. The supermarket offers meat plans, deli meats and cheeses, dairy products, product, household products and a wider variety of other groceries.

4. Respondent respectfully submits that Section 278.6(d) of the SNAP Regulations requires that before FNS may disqualify a firm from participating in the SNAP program it must consider, the nature and scope of the violations committed by personnel of the firm; any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and any other evidence that shows the firm's intent to violate the regulations.

Appellant, through counsel, also provided the following:

Invoices/Receipts (Inventory) and submissions

1. Quality Distributors Wholesale – 8 pages of sales history for January 2017 to December 2018 showing only ticket totals with no detailed food purchases.
2. Quality Wholesale – 4 pages of invoices dated for March and April 2019.
3. Krasdale Foods – 17 pages of invoices dated for February and March 2019.
4. Jersey Dairy Express – 13 pages – (4) containing dates and amounts with no detailed food information and (9) detailed invoices dated for February, March and April 2019.
5. Cibao Provision Inc. – 5 pages of detailed invoices dated for March and April 2019.
6. Meat Town – 7 pages of detailed invoices dated for March and April 2019.
7. Pepsi Beverages Company – 3 receipts dated for April and May 2019.
8. Hersey Ice Cream – 2 pages of receipts dated for April 2019.
9. AZ Metro Distributors LLC – 1 page invoice dated for April 2019.
10. Goya Foods – 7 pages of detailed invoices dated for February and April 2019.
11. The New Proovedora Latina – 17 pages of Customer Invoice Payments (non-detailed summary) dated for 2017 and 2018.
12. Wells Fargo 2018 Payment Processing Summary Report.
13. Letter dated April 2, 2019 (duplicated) from SP Business Services regarding its business relationship with Appellant.
14. Handwritten List of Suppliers.
15. Copy of a store ad showing meat plans ranging from \$18.99 to \$149.89 and deli specials.
16. 16 color photographs showing the outside of the store with drink stock and some of the stores inside stock.
17. 2016, 2017 and 2018 Corporation Income Tax Returns.

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

ANALYSIS AND FINDINGS

The FNS initially authorized the business as a medium grocery store on December 9, 2011. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during the October 19, 2018, store visit to the business 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 that formed patterns indicative of trafficking. The firm review summary documented the following store size, description, and characteristics:

1. One cash register & check out area, one POS device with a small counter area partially obstructed by other smaller items available for sale and encased in Plexiglas.
2. Estimated to be approximately 1200 square feet.
3. No shopping baskets or carts available for customers.
4. Optical scanner at checkout but no adding machines were available at checkout. No specialty registers present.
5. Store does not operate through a night window or plastic barrier with food stock behind the barrier.
6. No evidence of wholesale business such as posted prices or separate entrances for wholesale customers.
7. No unusual pricing structure such as ending most products with 00 cents and does not round transaction totals.
8. Some food stored in an area outside of public view, approximately 1000 square feet in size.
9. Store has storage freezers or coolers but not food stored off site.
10. Store is not primarily selling one food type such as meat, poultry, dairy, seafood, fruits, baked goods or vegetables.
11. Store takes telephone or online orders but does not offer delivery.
12. Store sells items as bundles (meat, seafood specials, fruit and vegetables boxes)
13. Highest priced eligible food items other than meat packages were Enfamil Infant (\$20.99), Enfamil Gentlease (\$21.49), Enfamil Prosobe (\$23.29) and Similac Alimentum (\$29.99).
14. Store stocks a significant amount of non-food items such as but not limited to paper products, household products, tobacco products, mobile phones/phone cards, automotive products, health and beauty aids, and cleaning products.
15. Store moderate amounts of dairy products, bread and cereal products, fruit and vegetable products and meat, poultry and fish products.
16. A kitchen/prepared food area with hot foods sold for onsite consumption. Microwave available for heating.
17. A deli or prepared food section where stock is used in prepared food items.
18. Meat or seafood specials or bundles or fruit/vegetable boxes sold.
19. Prominent menu board displayed which indicates "Wanda Deli & Restaurant" selling breakfast items, hot sandwiches, fried chicken, wraps, salads, cold sandwiches, burgers as well as a dollar menu.

The issue for consideration is whether Retailer Operations Division has presented a convincing case that Appellant likely trafficked in SNAP benefits. Each attachment furnished with the charge letter represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at the Appellant firm during the review period. As there is more than one pattern of irregular transactions, the case of trafficking becomes more convincing.

Attachment 1 of the Charge Letter – Multiple transactions were made from the accounts of individual SNAP households within a set time period.

There were 111 sets of 277 SNAP transactions that met the parameters of this attachment. Multiple transactions conducted by the same household account within a set time period is a

method which violating stores use to avoid the detection of single high dollar transactions that cannot be supported by the retailer's inventory and structure.

Appellant, through counsel, contends that the multiple transactions are nothing more than a product of the supermarket's location and clientele. Many of the customers do not drive and therefore make multiple trips to the supermarket per day. These customers purchase their groceries in multiple, smaller transactions which enables them to carry the groceries home in several trips. With regard to this contention, Retailer Operations conducted an analysis of the shopping habits and found that 54 SNAP households identified in the charge letter, conducted transaction 5 U.S.C. § 552 (b)(6) & (b)(7)(C) at Appellant's store within one day of conducting transactions at a large grocery store, supermarket or superstore. This analysis concluded that while these households also shopped at other area grocery stores including full-line supermarkets and superstores, that offer a much larger quantity and variety of eligible food items for likely better prices either on the same day or within days of visiting Appellant's firm, that despite this access, these households consistently conducted much higher transactions at the Appellant firm than at better stocked supermarkets and/or superstores in and around the Essex County area of New Jersey.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

It is certainly not unusual for a small number of SNAP households to conduct multiple transactions in a set time period. For example, mothers may shop and later send a child to the store to pick-up a forgotten item nonetheless; it is unusual that the second or subsequent transaction amount would be for more than a nominal amount. Additionally, it is questionable why households would visit Appellant up to eight times in a set time period expending benefits 5 U.S.C. § 552 (b)(6) & (b)(7)(C) when they have shopped at other larger supermarkets and superstores on the same day or within a day or two of visiting Appellant's store.

In conclusion, it is therefore more likely true than not true that the unusual, irregular transactions cited in the charge letter Attachment 1 are due to trafficking in SNAP benefits.

Attachment 2 of the Charge Letter – Your store conducted EBT transactions that are large based on the observed store characteristics and recorded food stock.

There were 343 SNAP transactions that met the parameters of this attachment. Based on the results of the contracted store visit, the large transaction amounts are not consistent with the store's inventory of low priced foods. Although Appellant advertises meat packages ranging from \$18.99 to \$149.99, the firm does not offer food in bulk or any ethnic or specialty foods that sell for a high price. Therefore, the substantial number of high dollar purchases calls into question the legitimacy of these transactions. There appears to be no basis for exceptional customer attraction to Wanda Deli & Supermarket with there being no great price advantage or specialty food offerings.

Appellant, through counsel, contends that the alleged large transactions are not large based on the supermarket's inventory. The supermarket offers meat plans, deli meats and cheeses, dairy products, household products and a wider variety of other groceries. With regard to this

contention, the food stock offered at the Appellant's store is readily available to SNAP customers at larger retail food stores, which carry a wider variety of food stock to include fresh meat, dairy, and produce. The store visit documentation indicates that other than the posted meat packages, the four stock most expensive stock items observed during the store visit were different varieties of baby formula. It is noted that the Appellant is WIC authorized therefore, baby formula purchases would most likely be made with WIC vouchers and not SNAP benefits.

Invoices/Receipts Submitted

Appellant, through counsel, provided invoices and receipts of inventory (as previously listed) during this review however, upon analysis of the documentation provided, it is determined that Appellant did not provide any invoices covering the review period from August 2018 to January 2019, therefore the amount of fresh meat used in the meat packages could not be determined during this review.

Additionally, based on the store visit documentation and photographs, it does not appear that the fresh meat available during the review was sufficient to fulfill repeated orders of the meat packages advertised. It is noted that Appellant also utilized its available stock in the preparation of the menu items which would reduce the amount of fresh meat items available to prepare the advertised packages. The record reflects that there was a supermarket and superstore located less than ½ mile from Appellant and an additional supermarket and four other medium grocery stores in less than a mile where the SNAP household also shopped. It is also noted that three of the four medium grocery stores are selling comparable or better fresh meat packages yet Appellant's transactions and dollar volume were greater than the comparable or better stocked medium grocery stores. This is suggestive of trafficking.

Letter from the General Manager

In a letter dated May 2, 2019, from the General Manager, Appellant claims that the store maintains 5 U.S.C. § 552 (b)(6) & (b)(7)(C) worth of stock daily and its marketing strategy is that 10 items are always sold below cost and 10 are marked up only by 10 percent. Appellant also stated that it offers free delivery with a purchase 5 U.S.C. § 552 (b)(6) & (b)(7)(C) however when asked during the store visit if the store provided delivery service the contracted reviewer was told that delivery was not offered. More importantly, if Appellant offered delivery service and this fact was known to its customers, there would be no need for them to make multiple trips to the store, as Appellant contends, just so they can hand carry their purchases home. Additionally, for clarification, Appellant did not provide any documentation to show that its daily stock value 5 U.S.C. § 552 (b)(6) & (b)(7)(C) or examples of its marketing strategy. Appellant's marketing strategy also does not adequately explain or provide sufficient evidence of the unusual, irregular and inexplicable transaction activity cited in the charge letter.

Appellant, through counsel, contends that the only duplication was items 1 and 2 in Attachment 1 of the charge letter which occurred as a result of a technical error in submission. Appellant stated that it spoke with the representative of the program and was advised how to handle the

error and did so according to their direction. This could easily be verified, but was not in any way a violation of the rules and regulations. The issue in this instance is if Appellant doubled charged the SNAP household and refunded the amount in error, this transaction would not have been part of the analysis or listed in the charge letter. It is important to note that any canceled or refunded transactions are not included or cited in transaction analysis.

Retailer Operations Division compared the Appellant's SNAP transactions with the average medium grocery store in Essex County, New Jersey. The average transaction amount for a medium grocery store in the County is \$13.90. The largest purchase amount at Appellant's store, during the review period, 5 U.S.C. § 552 (b)(6) & (b)(7)(C) more than 17 times higher than the average transaction amount. This is questionable particularly when Appellant's stock is compared to other medium grocery stores in the area, to include those that carried a larger variety and offered better fresh meat packages and that Appellant does not carry any specialty or ethnic items or bulk items that would sell at high prices.

Activity does not constitute trafficking

Appellant, through counsel, contends that there is no evidence of trafficking and that the activity alleged by FNS does not constitute trafficking as the term is defined by the SNAP regulations. The definition does not include "unusual, irregular and inexplicable activity." Likewise, the definition does not include the additional allegations of "multiple EBT transactions made from accounts of individual SNAP households within a set time period" and "transactions that are large based on observed store recorded food stock." The allegations simply do not rise to the level of trafficking as the term is defined by Section 271.2.

With regard to this contention, It must be noted that when the definition of trafficking was originally formulated, SNAP (originally the Food Stamp Program) utilized paper coupons which were legal tender for the purchase of eligible food items under program rules. There was no separation or distinction between the physical coupon itself and its value. Therefore, there was no reason to distinguish one from the other in the definition. The instrument and its value were simply one and the same. A 5 U.S.C. § 552 (b)(6) & (b)(7)(C) Food Stamp coupon had a value of 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and exchanging such a coupon for cash was the same as exchanging the 5 U.S.C. § 552 (b)(6) & (b)(7)(C) value of that coupon for cash. The value of the coupon and the coupon itself were inseparable.

The benefit delivery system has since changed. SNAP is now an electronic benefit system in which benefit holders are issued SNAP benefit cards which are used to debit benefits contained in their electronic accounts. Unlike the old Food Stamp coupons, SNAP benefit cards do not by themselves have any value. What is of value are the benefits contained in the household's electronic account for which the SNAP card is an access instrument. Such benefits may be plentiful or completely depleted. In fact, a SNAP card is not even necessary to transact SNAP benefits, only the card number and PIN. Value in the card can be sold for cash without the physical card being sold with it or the actual card being involved in the transaction.

Although counsel may be correct in that the definition does not physically include the wording as

cited in the charge letter, it must be noted that the extensive analysis of Appellant's EBT transaction record, upon which charges of violations are based, provides substantial evidence that questioned transactions during the focus period have characteristics that are not consistent with legitimate sales of eligible food to EBT customers at a store of this type and size. Rather, the characteristics are indicative of illegal trafficking in program benefits. In addition to the raw data of suspicious transactions, the file also notes that Appellant has no shopping carts or shopping baskets available for customers to carry the many items no doubt necessary for questioned transactions as large as listed. In addition, Appellant has only one register and one EBT device, very limited counter space, and did not provide sufficient documentation to explain, as legitimate, the program redemptions.

It is reasonable to assume that Congress' intentions about what trafficking meant did not involve the mere exchange for cash of paper or plastic, but involved rather the exchange for cash of the value such items had associated with and/or inherently in them. People do not traffic for the paper or plastic; they traffic for the benefits, for the value that is inherent in such items or accessible by such items. A review of the record has yielded no indication of error or discrepancy in the reported findings by 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 appears the Retailer Operations has provided substantial evidence of trafficking violations, in the two patterns of EBT transaction characteristics indicated in the letter of charges, and that it is more likely true than not that program violations did, in fact, occur as charged.

CFR § 278.6(a), which establishes the authority upon which FNS may disqualify any authorized retail food store, reads, in part: "Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through ... inconsistent redemption data (and) evidence obtained through a transaction report under an electronic benefit transfer system." Therefore, that the Retailer Operations Division used computer printouts of transaction data and other reports, in addition to store visit observations and an analysis of household shopping behavior, in rendering a finding that violations indicative of trafficking are occurring, is as valid a means of establishing facts as direct evidence obtained through an on-site investigation and the eye witnessing of trafficking.

Based on this empirical data, and in the absence of sufficient evidence as to the legitimacy of such transactions, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the charge letter evidence trafficking as the most likely explanation. In this case, ownership did not provide sufficient evidence to legitimize Appellant's transaction data as outlined in the Attachments. Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter attachments.

The transaction data and overall firm record convincingly demonstrate repetitive patterns of unusual, irregular, and inexplicable SNAP activity for this type of firm indicative of trafficking. Once Retailer Operations Division established a convincing case against Appellant, ownership

bears the burden of proving, by a preponderance of the evidence, that the administrative action 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. If this is not demonstrated, the case is to be sustained.

As noted, 7 CFR § 278.6(a) states that FNS may disqualify any authorized retail food store if the firm fails to comply with the Food and Nutrition Act of 1977, 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 inconsistent redemption data, and evidence obtained through a transaction report under an electronic benefit transfer system.

Retailer Operations Division has presented a convincing case that Appellant has likely trafficked in SNAP benefits. This is evidenced by: the suspicious patterns in two attachments of EBT transaction data, the inadequacy of the firm's eligible food stock as observed and recording during the onsite visit to support such large transactions, the lack of evidence of invoices of foods in inventory to cover SNAP redemption totals for the review months, the lack of explanation for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant, and the irregular SNAP transaction data of Appellant as compared to other medium grocery stores in the State.

In the absence of evidence for the legitimacy of such transaction patterns, based on information submitted by Appellant and a comparison of the store's characteristics and available stock to the transaction patterns cited in the charge letter, a conclusion can be drawn through a preponderance of evidence that the unusual, irregular, and inexplicable transactions and patterns evidence trafficking as the most likely explanation. While ownership was afforded the opportunity to provide valid explanations and evidence that support that the questionable transactions were the result of legitimate purchases of eligible food items, Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence in the record.

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

Appellant, through counsel, contends that that Section 278.6(d) of the SNAP Regulations requires that before FNS may disqualify a firm from participating in the SNAP program it must consider, the nature and scope of the violations committed by personnel of the firm; any prior action taken by FNS to warn the firm about the possibility that violations are occurring, and any

other evidence that shows the firm's intent to violate the regulations. With regard to this contention, the regulatory citation at 7 CFR § 278.6(d)(2),(3) which states, in part: "The FNS ...office making a disqualification or penalty determination ... shall consider:... (2) any prior action by FNS to warn the firm about the possibility that violations are occurring, and (3) any other evidence that shows the firm's intent to violate the regulations..." requires FNS to consider any prior warnings and evidence of a firm's intent to violate when determining a sanction. It does not require FNS to give such warnings prior to assessing a sanction. FNS did not consider prior actions to warn Appellant about the possibility that violations were occurring because there were no prior warnings. The evidence considered by Retailer Operations Division included the computer data of questionable SNAP transactions in five identified patterns indicative of trafficking, and information obtained during the aforementioned store visit and accompanying report and photos taken by a FNS contractor.

CIVIL MONEY PENALTY

Appellant was notified in the charge letter dated February 19, 2019, that it had 10 calendar days upon receipt of the charge letter to provide required documentation in order to be considered for the trafficking CMP. Appellant failed to provide Retailer Operations Division with the required documentation to be considered for a trafficking CMP in lieu of disqualification. Therefore, Retailer Operations Division correctly determined that Appellant was not eligible for a trafficking CMP as set forth in the SNAP regulations.

CONCLUSION

Ownership has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. As such, the SNAP regulations are specific with regard to the action that must be taken if personnel of the firm have trafficked, which is that FNS shall disqualify the firm permanently.

Retailer Operations Division's analysis of Appellant's EBT transaction record was the primary basis for its determination to permanently disqualify Wanda Deli & Supermarket from participation in the SNAP. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking in SNAP benefits. Therefore, based on a review of all the evidence in this case, it is more likely true than not true that program violations did, in fact, occur as charged by Retailer Operations Division. Based on the discussion herein, the determination to impose a permanent disqualification against Wanda Deli & Supermarket is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 1977, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (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 (FOIA), 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.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

October 7, 2019