

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

**Wink Supermarket,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0227685**

**FINAL AGENCY DECISION**

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

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Wink Supermarket.

**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 March 19, 2020, the Retailer Operations Division informed the Appellant that Wink Supermarket was in violation of the terms and conditions of the SNAP regulations, 7 CFR § 270 –282, based on EBT SNAP benefit transactions that "establish clear and repetitive patterns of unusual, irregular, and inexplicable SNAP activity for your type of firm." 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).

After considering the evidence in the case, the Retailer Operations Division issued an initial determination letter dated April 6, 2020, informing the Appellant that Wink Supermarket was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. However, in a letter dated June 2, 2020, the Retailer Operations Division rescinded the April 6, 2020 determination letter due to the determination being made prior to receiving the Appellant's April 9, 2020 response.

In a response to the Retailer Operations Division of April 9, 2020, the Appellant replied to the charges therein denying the trafficking allegations and providing various explanations for the questionable SNAP transactions that were outlined in the charge letter.

After considering the Appellant's reply and the evidence in the case, the Retailer Operations Division issued a determination letter dated June 2, 2020, informing the Appellant that Wink Supermarket was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations. The letter also stated that the Appellant was not eligible for a trafficking civil money penalty (CMP) as the Appellant did not 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 dated

In a letter postmarked June 8, 2020, the Appellant requested an administrative review of the Retailer Operations Division's decision to permanently disqualify the firm from participation in the SNAP. FNS granted the Appellant's request for administrative review by letter dated June 18, 2020.

## **STANDARD OF REVIEW**

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

## **CONTROLLING LAW**

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

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

... a disqualification under subsection (a) shall be ... permanent upon ... the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or

wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards ...

7 CFR § 278.6(a) states, inter alia:

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

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, inter alia:

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

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

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

7 CFR § 278.6(i) states, inter alia:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking as defined in § 271.2 if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations ...

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

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

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

### **SUMMARY OF CHARGES**

The Appellant was charged and determined to be trafficking based on an analysis of EBT transaction data from December 2019 through February 2020. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were a large number of transactions in repeated dollar values;
- There were multiple transactions made from the accounts of individual SNAP households within a set time period;
- The bulk of SNAP households' remaining benefits were depleted within short timeframes; and
- There were EBT transactions conducted 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 questionable transactions were the result of trafficking.

### **APPELLANT'S CONTENTIONS**

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

In the reply to the charge letter and in the administrative review request, the Appellant stated the following summarized contentions, in relevant part:

- With regard to the SNAP transactions documented in charge letter Attachment 1, all of the large repeated value transactions are for totally different customers. The Appellant offers specials every now and then and lots of customers purchase the special. This is why there are similar transactions amount in Attachment 1.
- With regard to the SNAP transactions documented in charge letter Attachment 2, all of the transactions are normal transactions. On many occasions, many customers purchase items and right after checking out they remember they need additional items so they make an another purchase at that time.
- With regard to the SNAP transactions documented in charge letter Attachment 3, the Appellant cannot limit customers on how much they spend when they shop at the store. Customers can choose to make small or large purchases at their discretion.
- With regard to the SNAP transactions documented in charge letter Attachment 4, the Appellant can provide inventory purchase receipts to show the store has enough food

stock to cover the SNAP purchases (Note: No vendor purchase invoices/receipts were provided to FNS by the Appellant).

- The Appellant requests reconsideration of the permanent SNAP disqualification and welcomes a visit of the store to see how it operates. The Appellant strongly disagrees with the permanent SNAP disqualification determination as FNS does not have any evidence against the firm and the agency cannot rely on prediction unless it is fact.
- The Appellant has been very consistent with implementation of company policy and is following all SNAP guidelines. The Appellant is an honest business and would like to maintain its clients and their business.

In support of these contentions, the Appellant submitted the following documents for review:

- June 2, 2020 letter from the Retailer Operations Division to the Appellant rescinding the initial April 6, 2020 determination letter; and
- June 2, 2020 determination letter from the Retailer Operations Division to the Appellant.

## **ANALYSIS AND FINDINGS**

### **SNAP Authorization**

FNS authorized Wink Supermarket for participation in the SNAP on September 26, 2019. During the review period of December 2019 through February 2020, Wink Supermarket was classified as a convenience store. The owner signed a SNAP application for the store on April 9, 2019 and acknowledged he 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 as repayment on credit accounts or in exchange for ineligible items.

### **Store Visit Observations**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered information obtained during a February 20, 2020 store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This information obtained from the store visit was also used to ascertain if there were justifiable explanations for the firm’s irregular SNAP transactions. The store visit report and photographs documented the following store size, description, and characteristics:

- Approximately 1,100 square feet in size with no additional dry storage outside of public view;
- No storage coolers or freezers
- No shopping carts or hand-held baskets available for customer use;
- One cash register and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;

- One small checkout counter area with limited check-out counter space;
- No optical scanners;
- No signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals;
- No meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices;
- No evidence of a wholesale business such as posted prices or separate entrances for wholesale customers;
- Did not have a special pricing structure such as prices ending in \$x.x9 or \$x.00;
- Transaction totals are not rounded up or down at the checkout counter;
- Telephone and online orders were not taken and delivery was not offered;
- The four most expensive staple food items in stock were Red Bull at \$19.99 per 12 count (1 unit in stock); Enfamil infant formula at \$15.00 per 12.4 to 12.5 ounces (8 units in stock); cereal at \$9.99 per any 3 boxes; and Red Bull at \$6.99 per 4 count;
- Had empty and scantily filled shelves;
- No fresh or frozen meats, poultry, or seafood;
- Frozen food items included a minimal variety and amount of vegetables, chicken sandwiches, burgers, pizza, and Hot Pockets;
- A minimal variety and amount of infant formula and foods;
- No kitchen and hot foods were not sold;
- No deli and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned fish, eggs, processed chicken, packaged lunch meat, and canned/potted meat;
- Dairy included milk, margarine, cheese, and sour cream;
- A minimal variety and amount of fresh produce;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, loaf bread, buns/rolls, corn meal, flour, tortillas, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, vegetable oil, and condiments; and
- Ineligible nonfood items included health and beauty aids, paper products, household cleaning supplies, automotive supplies, clothing, gift items, and household items.

The available inventory of SNAP eligible food at the time of the store visit showed food stock that would be typical of a convenience store, where households normally purchase a limited number of items. The SNAP eligible food stocked by the store was generally of a low dollar value, consisting mainly of inexpensive canned and packaged goods, snack foods, single-serving food items and accessory food items. There was little indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of groceries. Given the available inventory and the store's characteristics, this review could find no reason why the Appellant firm's SNAP redemption patterns differed so significantly from those of similar sized competitors.

## **Charge Letter Attachments**

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

Stores caught in trafficking violations consistently display particular characteristics or patterns of transactions, including those cited in the letter of charges. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

The Retailer Operations Division presented a case that the 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 store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Transactions in Repeated Dollar Values (Charge Letter Attachment 1)**

**5 U.S.C. § 552 (b)(6) & (b)(7)(C).**

Attachment 1 identifies large transactions made for repeated dollar values. Typically, the frequency of transactions peak at the average for that store type. Thereafter, the frequency of store transactions gradually decreases as the amounts in the transactions increases. The frequency of transactions do not typically spike at specific amounts. Such unusual clustering around specific transaction amounts is indicative of trafficking.

The Appellant contends that all of the large repeated value transactions are for totally different customers. The Appellant offers specials every now and then and lots of customers purchase the special. This is why there are similar transactions amount in Attachment 1.

However, the store visit inventory report and photos show that the Appellant does not have packaged items that can result in the same repeated dollar amount purchases by random customers. The store visit observations also show only a few expensive eligible foods in stock that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. These large transaction amounts are also not consistent with the Appellant store's inventory. As such, it is implausible that these 212 transactions resulted in the same six dollar amounts by different customers.

Patterns of transactions spiking at particular dollar amounts indicate that SNAP transaction amounts are contrived. Random data, which legitimate transaction activity approximates, is extremely difficult to produce intentionally; it is very difficult to avoid repetitive patterns when attempting to create the appearance of normal, near-random transactions. That various customers each repeatedly had totals around certain dollar amounts during the review period strains the credibility of Appellant's declaration that this activity reflected the acceptance of SNAP benefits in exchange for eligible food items. As the Appellant has offered no rational explanation for why such patterns might exist, it is reasonable to conclude that these same dollar value transaction amounts are the result of trafficking.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 2)**

This charge letter Attachment documents 31 sets of transactions (63 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** in SNAP benefits to meet the parameters of this scan. These transactions were conducted by 28 different SNAP households. Multiple transactions conducted by the same household account within a short period of time is a method which violating stores use to avoid single high dollar transactions that cannot be supported by a retailer's inventory and structure.

Although it is not uncommon for customers to have more than one transaction per day and there are no limits on the number of times EBT cards may be used or the amount of eligible foods that may be purchased, it is not common that such multiple transactions are for large dollar amounts. 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 the Appellant's stock and facilities and are therefore, indicative of trafficking.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Wink Supermarket multiple times during a short period or purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or significant bulk items or food cases for sale. The second and third transactions in each set are too large to consist of forgotten items. In addition, there was a small checkout area with one cash register for food purchases and one EBT POS device. There were no shopping carts or hand-held baskets at the time of the store visit available to customers for transporting food within the store. There were no optical scanners or conveyor belts to expedite high dollar or rapid consecutive purchases.

The Appellant contends that these purchases are the result of many customers completing their initial purchase and right after checking out they remember they need additional items and make another purchase. However, these transaction sets do not contain the characteristics associated with a household purchasing a forgotten item right after checking-out or of a household making a separate purchase to check their balance followed by another transaction as 28 of the 31 transaction sets **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. The transaction sets also do not contain the characteristics of a household returning later in the day to purchase a forgotten item or two as 30 of the 31 sets have subsequent transactions in amounts **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, far more than the cost of a forgotten item or two.



It is recognized that sometimes a firm may have unusual transaction patterns due to a recipient's lack of access to other SNAP authorized stores. However, there are 44 SNAP authorized retailers, including 1 super store and 1 supermarket, located within a 1.0 mile radius of Wink Supermarket that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Wink Supermarket and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record indicates that SNAP customers who shopped at Wink Supermarket during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to other authorized stores or the availability of other food stores does not appear to be an explanation for the Appellant's abnormally high SNAP transaction amounts conducted within a short timeframe of each other.

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods. The Appellant provided no arguments or evidence to substantiate its claim that trafficking did not occur.

### **Bulk of SNAP Benefits Exhausted (Charge Letter Attachment 3)**

This charge letter Attachment documents 72 suspicious transaction sets (74 total transactions) **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These transactions were conducted by 58 different SNAP households. Depleting the household's entire allotment in one or a few transactions, or within one or two days, leaving little or no benefits for the rest of the month is inconsistent with the normal shopping behaviors of SNAP benefit households. Therefore, transactions in which SNAP benefits are exhausted in unusually short periods of time are indicative of trafficking.

With regard to the SNAP transactions documented in charge letter Attachment 3, the Appellant contends that the firm cannot limit customers on how much they spend when they shop at the store. Customers can choose to make small or large purchases at their discretion.

A review of the store visit photos indicates that Wink Supermarket is a convenience store offering a minimal variety and amount of staple food items and does not offer any specialty or ethnic food items that are not available at other area authorized retail food stores. There were no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles/plans or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers.

As mentioned previously, there are 44 SNAP authorized retailers, including a supermarket 0.18 miles away, located within a 1.0 mile radius of the Appellant that can meet the nutritional needs of SNAP customers. The record indicates that SNAP customers who shopped at Wink Supermarket during the review period also shopped at other area grocery stores and, therefore, transportation to other stores is not an issue for these customers. Therefore, lack of access to

other authorized stores does not appear to be an explanation for SNAP customers exhausting their benefits in an unusually short period of time at the Appellant firm.

A government report on SNAP household patterns indicates that that typical EBT purchases are small (about 71 percent **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**) and SNAP benefits are spent throughout a given month--63 percent of SNAP households use more than half of their benefits in the first week after issuance and over half (56 percent) use more than 90 percent of the household benefits within two weeks after issuance. However, the study also found that “Supermarkets accounted for over 64 percent of all EBT transactions and 83 percent of the total value of EBT purchases” while “less than 6 percent never shopped at supermarkets.”

Although many 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 benefit allotment in only a few transactions or in a single day. Depleting one’s entire allotment in one or two days or in a single day, especially in a minimally stocked convenience store, leaving no benefits for the remainder of the month, is inconsistent with the normal shopping behavior of SNAP households. Rather, large single transactions, or multiple and high cumulative transactions which diminish balances over a short period of time soon after benefit issuance, are indicative of SNAP benefit trafficking and attempts to diminish attention to signs of the same.

The Appellant did not provide any compelling justification or evidence as to why SNAP households are spending the majority or all of their SNAP benefits in short periods of time at Wink Supermarket or evidence that all of the irregular transactions cited in this charge letter Attachment were for eligible food items only. Based on the analysis above and in the absence of any other reasonable explanation, the irregular transaction patterns are more likely than not to be a result of trafficking in SNAP benefits.

#### **Excessively Large Transactions (Charge Letter Attachment 4)**

This charge letter Attachment documents 505 SNAP transactions, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**. These large transaction amounts are not consistent with the store’s observed characteristics and food inventory. The frequency of high dollar purchases in the review period calls into question the legitimacy of these transactions.

The food stock and facilities of the Appellant as reported in the store visit documentation do not appear sufficient to provide for all of one’s food needs. People generally do not spend large sums at such stores. They usually stop at convenience stores to pick up a few staple food items, such as bread, milk, or a can or two of food that they may consider are not worth a trip to the supermarket to purchase. The Appellant contends that the large transactions are not the result of trafficking of SNAP benefits. However, it is rare for a convenience store such as the Appellant firm to have purchases like those included in Attachment 4 to the charge letter.

With regard to the SNAP transactions documented in charge letter Attachment 4, the Appellant contends that it can provide inventory purchase receipts to show the store has enough food stock to cover the SNAP purchases. However, no vendor purchase invoices/receipts were provided to FNS by the Appellant.

The FNS store visit report and photos show that Wink Supermarket offers a minimal stock of SNAP eligible foods with no fresh or frozen meats, poultry, or seafood, a minimal variety and amount of frozen foods, a minimal variety and amount of fresh produce, and a lack of an abundant depth and breadth of staple foods. The store visit inventory report and photos also show only a few expensive eligible foods in stock that would account for these large amounts, no signs posted or flyers available advertising the availability of bulk foods offered at a discounted rate to include meats in bulk, foods sold by the case, and grocery package deals, no evidence of meat/seafood specials or bundles or fruit/vegetable boxes that might sell for high prices, and no evidence of a wholesale business such as posted prices or separate entrances for wholesale customers. There is no evidence of a price advantage or custom or special services rendered at the subject store that are not offered at other authorized SNAP stores in the area. There is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar sized competitors. These large transaction amounts are also not consistent with the Appellant store's inventory.

**5 U.S.C. § 552 (b)(7)(E).**

While the Appellant firm may be located in a neighborhood with households that qualify for SNAP benefits, these factors are not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not displayed in other similarly stocked stores. If specific household needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would also present themselves at nearby firms as well. But this is simply not the case.

**5 U.S.C. § 552 (b)(7)(E).**

The store's layout, infrastructure, and food inventory do not support a high percentage of transactions markedly exceeding those of similar type stores. In addition to the statistical irregularity of such high dollar transactions, the limited availability of counter space for checking out and the lack of shopping carts and hand-held baskets support the Retailer Operations Division's determination. It is not plausible that the store's customers are carrying large amounts of food around the store without the benefit of shopping carts and/or hand-held baskets. Customers purchasing such large quantities of food items would have to hold them in their arms, or enlist the help of others while shopping.

The Appellant requests reconsideration of the permanent SNAP disqualification as FNS does not have any evidence against the firm and the agency cannot rely on prediction unless it is fact. With regard to the Appellant's contentions, the USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns that have characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division analyzes the transaction data and patterns along with other documentation such as, information from the onsite store visit report including photographs of stock and the store layout, an analysis of recipient shopping behavior, and comparisons with similar store types in local area, to render a determination as to whether or not the questionable transaction patterns were, more likely than not, the result of trafficking. The regulations at 7 CFR § 278.6(a) state 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, and that 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.

Based on the discussion above and in the absence of credible evidence 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. Nevertheless, transactions having such characteristics do sometimes have valid explanations that support that they were the result of legitimate purchases of eligible food items, and this is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, however, the Retailer Operations determined that the Appellant’s contentions did not outweigh the evidence. Assertions that the firm has not violated program regulations, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations. As noted herein, the Appellant has the burden of providing credible, relevant evidence, which 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 not true. This burden has not been met.

### **No Prior Violations**

The Appellant contends that it has been very consistent with implementation of company policy and is following all SNAP guidelines. The Appellant is an honest business and would like to maintain its clients and their business. However, a record of participation in the 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.

### **CIVIL MONEY PENALTY**

As previously indicated, the June 2, 2020 determination letter advised the Appellant of the ineligibility for consideration for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations. The letter of charges dated March 19, 2020 advised the Appellant that documentation of eligibility for that alternative sanction was to be provided within 10 days. The regulations specify that such documentation must, in part, establish that there was an effective compliance policy and training program and that both were in effect and implemented prior to the occurrence of violations. The letter indicates that no information was provided by the Appellant for consideration; therefore, on review the Retailer Operations Division’s determination that the Appellant firm is ineligible for the imposition of civil money penalties in lieu of disqualification is affirmed.

### **CONCLUSION**

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record, upon which charges of violations are based, together with observations made during the store visit and an analysis of customer shopping behaviors, provide substantial evidence that questionable

transactions during the focus period have characteristics and display patterns that are not consistent with legitimate sales of eligible food to SNAP benefit customers at a store of this type, size and makeup. Rather, the characteristics are indicative of illegal trafficking in program benefits. The Appellant's contentions do not outweigh this evidence.

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

### **RIGHTS AND REMEDIES**

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

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

LORIE L. CONNEEN  
ADMINISTRATIVE REVIEW OFFICER

August 4, 2020