

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

**YLL Highclass Healthy Products,**

**Appellant,**

**v.**

**Retailer Operations Division,**

**Respondent.**

**Case Number: C0220551**

**FINAL AGENCY DECISION**

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a permanent disqualification of YLL Highclass Healthy Products (hereinafter “Appellant”) from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by FNS’s Retailer Operations Division.

**ISSUE**

The issue accepted for review is whether or not the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against YLL Highclass Healthy Products.

**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.”

**SUMMARY OF CHARGES**

The Appellant was charged with trafficking and subsequently permanently disqualified from SNAP based on an analysis of EBT transaction data from March 2019 through August 2019. This involved the following transaction patterns which are common trafficking indicators:

- There were a large number of transactions in repeated dollar values.
- There were multiple transactions made from one or more SNAP households within a short timeframe.

- There were multiple transactions made from the accounts of individual SNAP households within a set time period.

## CASE CHRONOLOGY

The agency's record shows that FNS initially authorized YLL Highclass Healthy Products for SNAP participation as a combination grocery/other store on August 10, 2015. In a letter dated October 31, 2019, 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 between the months of March 2019 and August 2019. The letter noted that the penalty for trafficking is permanent disqualification as provided by 7 CFR § 278.6(e)(1). The letter also stated that the Appellant could request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking, but noted that such a request must be made and supporting documentation submitted within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In correspondence between November 5, 2019, and December 2, 2019, the Appellant responded to the trafficking allegations, claiming that it did not engage in trafficking, and because there are a lot of police in the area, it had no way of doing any illegal acts. The Appellant provided a number of explanations to justify the transaction patterns listed in the charge letter. For example, the Appellant argued that the store is near a subway entrance and claimed that most of its customers are elderly. The Appellant also claimed that most of its staple food items are not commercially packaged, but sold by weight. This is so customers can select fresh food and have a good experience at the store. The Appellant further stated that it keeps as little inventory as possible so that the food in the store is fresh.

The Appellant made the following arguments relating to the charge letter attachments:

- *Attachment 1 – Transactions with repetitious dollar amounts:* This was mainly due to customers requesting round numbers. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This is because elderly customers find it easier to keep track of their remaining SNAP balance and know how much they can spend. The Appellant further stated that common foods that are sold by weight for 5 U.S.C. § 552 (b)(6) & (b)(7)(C) are walnuts, almonds, pistachios, and black fungus. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).
- *Attachment 2 – Multiple transactions from one or more SNAP households in short periods of time:* A lot of EBT customers, especially in the summer, buy the same items and then request that they be charged two times rather than making the purchase in a single transaction. The Appellant cannot challenge how the customers choose to conduct their transactions. The Appellant is simply following what the customer wants. Once the Appellant received the charge letter, it immediately stopped this practice, but about 50 percent of these customers left without buying anything. Additionally, the elderly save their EBT benefits and give them away to others, which is out of the Appellant's control.
- *Attachment 3 – Multiple transactions from the same household within a set time period:* EBT cardholders make a purchase and then find something else to buy; or the Appellant tells them what kind of food was just delivered or is on sale, so they decide to make another purchase, knowing that the food is available for a good price.

Finally, the Appellant stated that the area in which the store is located is very busy and there are a lot of police that pass by, so the firm had no way of doing any illegal acts. Also, the Appellant has no reason to commit such violations. Additionally, the elderly customers are so old they will not commit trafficking violations because they worry about going to jail or losing their government benefits.

In support of its contentions the Appellant submitted 27 signed statements from apparent SNAP customers who claimed to purchase food from YLL Highclass Healthy Products. All of the statements also requested that FNS obtain a Chinese interpreter so that the customers could better discuss the issues. Thirteen of the statements – which were identical except for the customers’ personal information – said that the customers bought various food items (dried mushrooms, black fungus, dried shrimp, etc.) because they are fresh, clean, and sold at a good price. The customers in the remaining 14 statements – again, identical except for personal information – did not mention the various food items purchased, but stated that they asked the firm to charge them two times, as indicated in Attachments 2 and 3 of the charge letter.

After reviewing the Appellant’s response and documentation and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated February 10, 2020. This letter informed the Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered the Appellant’s eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but determined that a CMP was not appropriate because the Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In a letter postmarked February 13, 2020, the Appellant appealed the Retailer Operations Division’s determination by requesting an administrative review. The request was granted. It should be noted that the Appellant submitted additional contentions in letters dated February 19, 2020, and March 13, 2020, and in e-mails dated February 24, 2020, and March 16, 2020.

### **STANDARD OF REVIEW**

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that 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 AND REGULATIONS**

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

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

...[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 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, [or] evidence obtained through a transaction report under an electronic benefit transfer system.... [Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

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

7 CFR § 271.2 states, in part:

Trafficking means: The buying, 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 § 271.2 states, in part:

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

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification.... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

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) of this section, 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, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

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).

7 CFR § 278.6(b)(2)(iii) states:

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

7 CFR § 278.6(i) states, in part:

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

### **APPELLANT'S CONTENTIONS**

Along with its request for administrative review, the Appellant submitted a copy of its original response to the charge letter and copies of the 27 signed statements from SNAP customers. The Appellant also made the following additional contentions, summarized below, in relevant part:

- When the Appellant owner received the agency's determination letter, he called the Retailer Operations Division, but they did not explain how the firm broke the regulations.
- Appellant called each of the EBT cardholders who submitted signed statements, and all of them said that no one from FNS ever called to confirm their statements.
- Appellant's civil rights were violated in this case. This is not fair to the Appellant at all.
- Appellant requests that the administrative review officer call the people who signed the statements.

It is noted that in an e-mail on February 24, 2020, the Appellant asked the review officer directly if he would be calling the persons who signed the 27 statements. In response, the review officer stated that he would not be making such contacts, but would consider the written statements as they were submitted. When an administrative review is conducted, the determination is based on information that is submitted in writing. This is in accordance with SNAP regulations at 7 CFR § 279.2(b) and § 279.5(a).

On March 13, 2020, the Appellant provided the following additional information:

- Because the review officer will not call the EBT cardholders to prove that what the Appellant is arguing is true, the Appellant has submitted additional signed statements in an effort to prove that the firm is running its business in a legal way and is following USDA policy and regulation.

- Recently, New York City is under a virus crisis and the situation is getting worse each day. Everyone is scared of the virus hitting their area.
- Appellant hopes that the review officer will consider the average age of its customers. They average over 60 years old. They like to get a little bit of benefit, so the Appellant rounds the dollar amounts.
- The store location is excellent. It is the busiest Chinese area and is very densely populated. It is near a subway stop. If a person wants to go to many parts of Queens, they have to transfer at Flushing.

In support of these contentions, the Appellant submitted five additional signed statements. These five are identical except for the personal information. Those who signed the statements claim that they always buy food from YLL Highclass Healthy Products and have proven that the firm runs its business in accordance with USDA policy and regulations. The statements also say that it is better to find a Chinese interpreter so that the customers can explain their position. It should be noted that these five new statements were signed by customers who were part of the original 27 statements submitted by the Appellant in response to the charge letter.

The preceding may represent only a brief summary of the Appellant's contentions presented in this matter. However, in reaching a decision, full attention was given to all evidence and contentions presented, including any not specifically summarized or explicitly referenced herein.

## **ANALYSIS AND FINDINGS**

The primary issue for consideration in a case based on suspicious SNAP redemption data is whether or not the Retailer Operations Division adequately established that the Appellant firm engaged in the violation of trafficking. In other words, did the Retailer Operations Division, through a preponderance of the evidence, establish that it is more likely true than not true that the irregular and unusual transactions cited in the charge letter were the result of trafficking?

### **Contractor Store Visit**

The case file indicates that in reaching a disqualification determination, the Retailer Operations Division considered not only the Appellant firm's EBT transactions, but also information obtained from a July 1, 2019, store visit which was conducted by an FNS contractor to observe the nature and scope of the firm's operation, stock, and facilities. This store visit information was used to determine if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report and photographs documented the following store size, description, and characteristics:

- YLL Highclass Healthy Products is listed on agency records as a combination grocery/other store, but from the store visit, it could accurately be described as a Chinese or Asian herbal store. The store is roughly 650 square feet in size, operating in the neighborhood of Flushing, in the New York City borough of Queens.
- At the time of the contractor's visit, the firm did not have any shopping carts for customer use, but did have a small number of hand-held shopping baskets.

- The store visit photographs show one cash register, and agency records reflect the use of one EBT point-of-sale terminal for SNAP purchases. It appears that the firm does not use an optical scanner to ring up items on the cash register.
- The store's staple food stock is typical of an Asian market specializing in herbs, spices, supplements, and dried foods. Many of the food items are stocked in barrels or other containers and sold by weight.
- Nonfood items at the store include a large amount of health and beauty products.
- The checkout area consists of a glass countertop where customers can place a few items to be purchased. The checkout area is not suitable for conducting large or rapid transactions as there is little space on the counter to place more than a few items at a time and little room for customers to maneuver with large amounts of groceries.
- Many items in the store appear to end with a cents-value of 9, such as \$3.99 per pound of peanuts, or \$1.69 per pound of red beans. Many items also end in .00 or .50, such as black beans for \$2.00 per pound or almonds for \$7.50 per pound.
- According to the report, some of the items in the store are extraordinarily expensive, such as dried scallops for \$118.00 per pound, dried abalone for between \$108.00 and \$388.00 per pound; raw ginseng for between \$168.00 and \$898.00 per pound, and dried sea cucumber for between \$178.00 and \$468.00 per pound.

The available inventory of SNAP-eligible food at the time of the store visit showed stock that would be very different from most SNAP-authorized stores, but typical of Asian herbal stores, which are plentiful in the Flushing Chinatown area. Agency records show at least half a dozen similarly-stocked, SNAP-authorized stores within a half-mile radius of YLL Highclass Healthy Products. Such stores are not likely places where households would purchase all of their groceries, but rather the type of firm where a household would normally purchase a limited number of items to supplement their overall dietary needs. 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 and similar-type competitors.

### SNAP Transaction Analysis

**Charge Letter Attachment 1:** There were a large number of SNAP transactions in repeated dollar values. This attachment lists 244 transactions, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For instance, 5 U.S.C. § 552 (b)(7)(E).

It is certainly not uncommon for dollar values to repeat over the course of a six-month period, but when certain dollar values are unusually repetitive without store characteristics that would lend itself to such repetition, further explanation and evidence from a store is warranted to ensure that the transactions are truly legitimate rather than the result of violative behavior.

The Appellant has argued that the patterns in Attachment 1 were mainly due to customers requesting round numbers at the point of sale. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the Appellant, the customers make such requests because they find it easier to keep track of their remaining SNAP balance and know how much they can spend. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). For instance, the Appellant stated that a customer could

purchase five pounds of walnuts. Normally this product would sell for \$7.50 per pound, but if the firm charged just \$7.00 per pound, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Or a customer could purchase one pound of large dried shrimp for \$30.00 and one pound of peanuts for \$5.00, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Or a customer could purchase one pound of medium dried shrimp for \$24.00, one pound of small dried fish for \$8.00 and one pound of red dates for \$8.00, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These are just a few of the examples provided by the Appellant.

It is entirely possible that the firm rounds transactions up or down at the point of sale, and it may well be that randomly selected items routinely calculate to the dollar amounts listed above. Unfortunately, all of the Appellant's arguments are anecdotal and are presented without any supporting evidence. Such evidence might have included itemized cash register receipts to prove that the transactions in question were legitimate purchases of eligible food. Anecdotal explanations without supporting documentation do not convince this review that the transactions in Attachment 1 were valid. Without compelling evidence to prove otherwise, this review finds it reasonable to conclude that the transactions in Attachment 1 were likely the result of trafficking violations.

**Charge Letter Attachment 2: Multiple transactions were made from one or more SNAP households within a short timeframe.** This attachment lists 127 sets of transactions (254 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits.

After reviewing the data in Attachment 2, this review finds that the majority of transaction sets in this attachment are duplicates of transaction sets found in Attachment 3. Attachment 3 similarly focuses on transactions made in a narrow window of time. Accordingly, this review finds that the patterns found in Attachment 2 are not fundamentally different from those that are found in Attachment 3. As such, this review is dismissing the trafficking allegation related to Attachment 2. This trafficking case is now based on just two attachments: 1 and 3.

**Charge Letter Attachment 3: Multiple transactions were made from the accounts of individual SNAP households within a set time period.** This attachment lists 130 sets of transactions (336 transactions in all) 5 U.S.C. § 552 (b)(6) & (b)(7)(C). 5 U.S.C. § 552 (b)(7)(E).

For example, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such patterns are extremely unusual.

But the strange patterns do not stop there. 5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Such repetitive transactions and dollar amounts at a small store like YLL Highclass Healthy Products are highly irregular and are often an indication of trafficking. As such, these transactions warrant further explanation.

In its response to the charge letter, the Appellant, in explaining why the firm had so many transactions from the same households in rapid succession, argued that there are many instances, especially during the summer, where customers buy the same items – such as almonds, black fungus, walnuts, dry mushrooms, and pistachios – 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and they request to be charged two times. The Appellant claims that it cannot challenge the customers, but



simply complies with their request. The Appellant further argued customers will make a purchase and then find something else they want to buy, or the owner will tell them what kind of food items have just arrived or are on sale. According to the Appellant, the customers will often then make another purchase.

As to the claim that customers frequently purchase items 5 U.S.C. § 552 (b)(6) & (b)(7)(C), this explanation seems implausible, especially since a large portion of the merchandise is sold in bulk. In other words, customers select exactly how much of an item they want to purchase. It is then weighed, and the total cost is dependent upon the weight of the item and the cost per pound. That these randomly-selected amounts of food would so frequently total 5 U.S.C. § 552 (b)(6) & (b)(7)(C) seems unlikely.

It is further unlikely that the customers would request that the transactions be broken down into two separate transactions. There is no discernible advantage to the customer to go through the process of swiping the EBT card twice when once for the full amount would have been sufficient. Further, if such customer requests were truly common, as the Appellant claims, then it stands to reason that similar stores in the immediate vicinity would show similar transaction patterns. But that is not the case.

The chart below shows six comparable stores located less than a third of a mile away from YLL Highclass Healthy Products. These nearby stores contain similar merchandise – often carrying some identical products – and are comparable in size and scope. And yet, YLL Highclass Healthy Products has more than twice as many repetitive transactions during the six-month review period than all six comparable stores combined.

#### 5 U.S.C. § 552 (b)(7)(E)

Why is it that SNAP customers regularly ask the Appellant to break down very large purchase amounts into two or more separate transactions, but do not appear to make such frequent requests at other stores? The Appellant's explanation does not shed any light on this disparity.

As to the Appellant's claim that customers will make an initial purchase and then decide to buy something else, this behavior is fairly common at any store. It is often the result of a customer having forgotten an item or two, or discovering something on sale after their initial purchase. But such decisions rarely result in the subsequent purchase being nearly as large as or even larger than the first purchase. In this case, the second, third, or even fourth or fifth transactions are often larger than the first one. Such activity is much more likely an indication of violations, such as trafficking, than normal customer shopping behavior.

It should be noted that the Appellant has not offered any compelling evidence to prove that the transactions in Attachment 3 were legitimate purchases of eligible food. Such evidence might have included itemized cash register receipts to show what took place between the customer and the cashier at the point of sale.

This review does not doubt that YLL Highclass Healthy Products sells eligible food items and conducts legitimate SNAP business. But when unusually large and repetitive transaction sets

form patterns that are substantially different from comparable stores in the area, further evidence from the Appellant is warranted to verify that there is not something more, such as trafficking or other program violations, taking place. In this case, the Appellant has not offered any compelling evidence, such as itemized cash register receipts, to help explain what occurred between the customers and store personnel at the point of sale. Accordingly, it is the finding of this review that trafficking was a likely cause of the transaction patterns found in Attachment 3.

Except for the rule that SNAP benefits are to be used only for the purchase of eligible food, the regulations do not govern or mandate how a SNAP household spends its benefit allotment, including how many times a household may use its EBT card at a particular location or how large an individual transaction can be. However, the transactions noted in the charge letter are questionable not because they exceed any limits for use, but because they display patterns of use that are inconsistent with the store's documented physical characteristics and food inventory. It should be further noted that the transactions identified in the charge letter are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP-authorized stores with similar characteristics. This review does not contend that frequent or large EBT transactions are overtly suspicious when they occur on an occasional or intermittent basis, but when such transactions form questionable patterns on a consistent basis over a substantial period of time, such activity is considered highly irregular, and a firm's intent to comply with program regulations is called into question.

In an appeal of adverse action, the onus is on the Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. This means submitting sufficient and compelling evidence that would lead a reviewer to conclude that trafficking did not occur. Unfortunately the Appellant's contentions and evidence do not meet this standard.

### **Signed Customer Statements**

One of the Appellant's primary contentions is a complaint that FNS did not properly follow up on the 27 signed customer statements which the Appellant submitted in response to the charge letter. In the statements, the customers claimed that they purchase food from the store. Thirteen of the statements identify several of the items that items that were allegedly purchased, while 14 statements indicate that the customers requested that the store charge them twice. Each of the statements also requested that FNS find a Chinese interpreter so that the customers can better explain.

Agency records show that the Retailer Operations Division conducted, where possible, an analysis of the SNAP activity of each person named on the signed statements. This analysis revealed that many of the customers traveled between one and seven miles to make purchases at YLL Highclass Healthy Products, often bypassing other comparable stores. The analysis further showed that several of the signers did, in fact, conduct some of the suspicious transactions listed in the charge letter, while a few of the signers did not conduct any transactions on the list. While it is difficult to draw any conclusions from the agency's analysis, it is clear that the Retailer Operations Division did not ignore the signed statements, but gave them substantial consideration prior to making a disqualification determination.

In its request for administrative review, the Appellant submitted five more signed statements and requested that the review officer obtain an interpreter and then call the customers to discuss the matter further. In an e-mail on February 24, 2020, the Appellant asked the review officer directly if he would be calling the EBT cardholders who signed the statements.

With regard to these issues, it must be made clear that in an administrative review, the final agency decision is based on information that is submitted in writing. This is in accordance with SNAP regulations at 7 CFR § 279.2(b) and § 279.5(a). Thus, the content of the customer's written statements is considered, but the review officer is under no obligation to reach out to customers by telephone for further clarification.

It bears repeating that in an appeal of adverse action, the onus is on the Appellant to prove, by a preponderance of the evidence, that the administrative action should be reversed. It is incumbent upon the Appellant to provide sufficient and compelling written evidence which shows that the Appellant's claims are, more likely than not, true. It is not the responsibility of the review officer to help the Appellant prove its case. The review officer simply evaluates all written contentions and evidence from both sides of the issue and makes a ruling based on the preponderance of the evidence. If an appellant's explanations and evidence are insufficient, the administrative action in question is likely to be upheld.

In this case, this review finds that the signed statements offer few details and do not sufficiently explain why the transaction patterns listed in the charge letter are so unusual in comparison to nearby comparable stores. Additionally, customers engaging in trafficking violations are unlikely to admit to such conduct, especially when such an admission could potentially open themselves up to administrative or even criminal penalties. Experience has shown that customer declarations and written affidavits routinely attest to irregular transactions being legitimate even when there is strong evidence suggesting otherwise. As such, this review finds the signed customer statements in this case to be of little evidentiary value and an insufficient basis for a reversal or modification of the permanent disqualification action taken against the Appellant.

### **Remaining Contentions**

The Appellant has offered several other contentions regarding the location of the store, the age of its customers, and the recent coronavirus pandemic that has impacted the country. The Appellant has also stated that its civil rights were violated.

Unfortunately, the Appellant has not offered any explanation as to why the location of the store or the age of its customers has any relevance to this case. Trafficking can be committed by old and young alike and in any location. As to the coronavirus pandemic, this situation did not begin in earnest in the United States until mid-March 2020, which is more than six months after the end of the review period in this case. As such it is of no relevance in the matter. Finally, the Appellant has not offered any reasons why it believes that its civil rights were violated, and this review cannot find any evidence whatsoever that the Appellant's rights were violated or infringed in any respect.

## **Civil Money Penalty**

The Retailer Operations Division determined that the Appellant firm was not eligible for a civil money penalty in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate supporting documentation within 10 days of receipt of the charge letter. The case record shows that the Appellant did not request a trafficking CMP when it replied to the charge letter and there is no evidence that the Appellant submitted any documentation that would indicate that the firm had a compliance policy or program of any kind.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

## **CONCLUSION**

An analysis of the Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify YLL Highclass Healthy Products from SNAP participation. The data outlined in Attachments 1 and 3 of the charge letter provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed were more likely than not the result of trafficking violations committed by the Appellant. Likewise, the Appellant has not proven by a preponderance of the evidence that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against the Appellant, YLL Highclass Healthy Products, under the ownership of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, is sustained.

## **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. 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 the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

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.

JON YORGASON  
Administrative Review Officer

May 15, 2020