

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

**Yordi Dollar Plus Food Store LLC #1,**

**Appellant,**

**v.**

**Case Number: C0202834**

**Retailer Operations Division,**

**Respondent.**

**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 Yordi Dollar Plus Food Store LLC #1 (hereinafter “Yordi Dollar Plus Food Store LLC #1” 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 Yordi Dollar Plus Food Store LLC #1.

**AUTHORITY**

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

**CASE CHRONOLOGY**

In a letter dated November 14, 2017, the Retailer Operations Division informed the Appellant that Yordi Dollar Plus Food Store LLC #1 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).

The record indicates that in a letter dated November 27, 2017, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Yordi Dollar Plus Food Store LLC #1 pursuant to the Freedom of Information Act (FOIA). In a letter dated January 8, 2018, FNS provided the Appellant's counsel with a response to the initial FOIA request. The Appellant's counsel appealed the FOIA request in a letter received on April 8, 2018. In a letter dated January 27, 2020, FNS provided the Appellant's counsel with a response to the FOIA appeal. On January 29, 2020, the Retailer Operations Division sent a 10 day letter to counsel providing the opportunity to respond to the letter of charges. The Appellant's counsel subsequently requested and was granted an extension until February 20, 2020 to provide a response to the charge letter.

In responses to the Retailer Operations Division of February 20, 2020 and March 9, 2020, the Appellant, through counsel, denied the trafficking allegations and provided various explanations for the questionable SNAP transactions that were outlined in the charge letter.

After considering the Appellant's replies and the evidence in the case, the Retailer Operations Division issued a determination letter dated April 17, 2020, informing the Appellant that Yordi Dollar Plus Food Store LLC #1 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 postmarked April 29, 2020, the Appellant, through counsel, 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 May 12, 2020. In a May 27, 2020 email to the FNS FOIA office, the Appellant's counsel requested additional information and documents from FNS with regard to the agency's case against Yordi Dollar Plus Food Store LLC #1 pursuant to the FOIA. Appellant's counsel was subsequently advised that FNS is not required to hold an administrative review in abeyance upon counsel's receipt of the agency's response to the initial FOIA request. In a June 10, 2020 email, the Appellant, through counsel, submitted additional information in support of the request for administrative review.

### **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 March 2017 through August 2017. This involved the following SNAP transactions patterns which are indicative of trafficking:

- There were multiple transactions made from individual benefit accounts within a set period of time; and
- There were excessively large purchase transactions made from recipient accounts.

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 replies to the charge letter, in the administrative review request, and in subsequent correspondence to FNS, the Appellant, through counsel, stated the following summarized contentions, in relevant part:

- The Appellant vehemently denies that trafficking took place. The transactions outlined in the charge letter are the statistical results of the store's business operations, local demographics, particular shopping habits of the store's clientele, mixed with the inventory and staple food items.
- The Appellant operates as a convenience store and serves as a local grocer in Oxon Hill, Maryland, providing a variety and quantity of staple food items to the surrounding community such as milk, soda, chips, bacon, bread, cakes, juices, cookies, breads, frozen chicken cutlets, frozen chicken nuggets, hot dogs and additional food items. The on-site store visit by FNS found that the Appellant was sufficiently provisioned in all four staple food categories to satisfy the purchase amounts listed in the charge letter.

- As noted in the Case Analysis Document, the store has a lower dollar-per-transaction average than most other stores of its category. However, the store values its SNAP clientele and carries a strong variety of foods in adequate quantity to satisfy short term grocery needs. The FNS store visit shows that the shelves are full of eligible items and that it carries a well-rounded variety of foods to satisfy a shopping trip for staple food items, should participants want to.
- Consumer's shopping habits have trended towards an increase in the use of convenience stores, small grocers, and ethnic food stores. A large portion of SNAP households redeem nearly all of their benefits in the first two weeks of the month. Small grocery/convenience store customers are among some of the most loyal customers when it comes to their selection. SNAP participants, which traditionally have more limited financial resources, are more likely to shop regularly at a small grocery/convenience store than non-participants. Unlike normal shopping habits, SNAP participants buy sweetened beverages, frozen prepared foods, and prepared desserts at a much higher rate than traditional consumers.
- The Appellant offered demographic information about the surrounding firm and the median income of area SNAP customers. The Appellant also provided data related to shopping trends and habits of customers. The data comes from the following articles/studies (copies of which were provided by the Appellant): Benefit Redemptions Patterns in the Supplemental Nutrition Assistance Program Final Report (FNS Study, February 2011); U.S. Grocery Shopping Trends, 2016 (FMI); Foods Typically Purchased by SNAP Households (FNS Study, November 2016); and Know Your Core, Protect Your Core (Small Grocery Store News for the Single Store Owner, April 2016). The Appellant also provided data from Studying Customer Behavior in Retail Stores (Journal of Marketing article, William Applebaum of Stop & Shop, Inc.) and USDA's Profile of SNAP Households for the 4<sup>th</sup> Congressional District of Maryland.
- With regard to the transactions documented in Attachment 1, all of these transactions are the result of the store's business practices, co-shopping, and/or the habits of the SNAP clientele. In Maryland, participant benefits are issued between the 4th through the 23rd day of each month, based upon the first three letters of the SNAP recipient's last name. USDA has previously conducted research into the standard practices of participants for food purchases, and purchases made within the first seven days after receiving benefits is not unusual. In fact, on a regular basis, the participants will make significant grocery purchases from the Appellant store 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of receiving the deposit in their accounts. Such patterns are supported by the Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Final Report (2011). Here, almost all of the transactions set forth in Attachment 1 reflect this standard shopping habit and patterns of SNAP participants. Often, SNAP customers realize after they have left the store and made their initial purchase that they have forgotten a grocery item or have decided that they want to purchase items they saw during the first trip, but originally opted not to purchase. In other instances, multiple members of the same household will shop together (co-shopping) and then make their purchases separately (using the same account and card) in quick succession. In yet other circumstances, SNAP customers will go on a spending spree wherein they make purchase after purchase without leaving the store, or return after a brief absence, thereby reducing their benefits in short order. These are innocent transactions resulting from a participant forgetting an item in his/her prior

transaction; co-shopping; the participant making a purchase, returning home, and then returning to the store to make a second purchase; and a reflection of the normal shopping habits of SNAP participants. As stated in the court in *Onukwugha v. U.S.*, “multiple transactions occurring over the span of hours” are not “inherently suspicious” as it is not uncommon for a customer to make multiple trips to the same store on the same day. The innocence of these transactions are further supported by the Appellant’s SNAP customer affidavits submitted herewith, wherein six SNAP participants attest to making multiple purchases at the store within mere hours and four others attest to making multiple purchases at the store within one day (Note: No affidavits were forwarded to FNS by the Appellant).

- With regard to the transactions documented in Attachment 2, the Appellant offers its clientele a considerable inventory. As such, these transactions are the result of the store’s inventory, co-shopping, and/or are the normal reflections of a SNAP participant’s shopping habits. FNS’s own study, *Foods Typically Purchased by SNAP Households* (November 2016), notes that sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households, as are meats and a number of other items that are offered by the store. It is therefore reasonable to expect SNAP customers to spend large amounts and/or the majority of their SNAP benefits at the Appellant store on sweetened soda and snack items, which the store is stocked with as is reflected by the FNS store visit, as well as the invoices submitted herewith (Note: No invoices were forwarded to FNS by the Appellant). In some instances, SNAP participants purchase eligible food items for multiple other persons. It is not uncommon for sales of Red Bull cases, chips, sodas and other items to be bought in bulk by the participant, who likely intends to distribute the items amongst a number of other persons. Aside from the inventory of convenience foods and regular groceries found at the Appellant, the households that conducted the charge letter transactions likely have a larger amount of SNAP residents residing therein, thus requiring a larger quantity of grocery products each month than those households with less participants. Furthermore, and importantly, it is common for customers to spend larger amounts at the Appellant as a direct result of the lack of nearby alternative stores that offer sufficient inventory, discounted prices and convenience. The closest super stores are more than a half mile away, and the only supermarket is barely within a mile radius—all straight line distances. Actual walking distances are far greater. As such, it is reasonable for the Appellant’s SNAP customers to spend large amounts and/or exhaust their benefits at the subject store as it offers customers the most amount of groceries for their money/SNAP benefits over any of the other local stores. With regard to the alleged analysis of the store comparison, there are likely differences between the Appellant and those to which the Appellant was compared. Inventory prices, convenience of the store, and local population density play material parts in the success or failure of otherwise identical stores with identical business models. A deviation from “average” is reasonably expected. The transactions in this charge letter Attachment are not the result of trafficking and are supported by the substantial inventory of the store, co-shopping, the store’s pricing structure, reliance on the store as a primary grocery for some minutiae of local participants, or the general aberration and statistical outlier to the average whole.
- The ALERT transaction scans are not indicative of trafficking. USDA lacks any study to indicate that they are meaningfully correlated to trafficking, and in the absence of such

information, a finding by USDA of trafficking based upon a correlation between transaction categories and the specific violation of trafficking is outright arbitrary and capricious. The ALERT system is over-utilized by USDA and has created an internal belief that the system is infallibly accurate in finding fraud and that data analysis is prone to error without accurate context. By the Department's own sworn deposition statement, the ALERT system cannot identify fraud. The Division has held that "[w]ithout relevant evidence from the [retailer], such as inventory records or itemized cash register receipts, it is reasonable for this review" to conclude that trafficking more likely than not occurred at the store. (Emphasis added). See *TG Mini Mart, Inc.*, Case No. C0203554, Pg. 11-12 (stating that the retailer failed to provide evidence, such as cash register receipts, accounting records, or inventory purchase invoices to demonstrate that the transactions were in fact legitimate – and indicating that the presence of these documents would change the outcome of the analysis); See also *Lima Mini Mart Inc.*, Case No. C0208310, Pg. 11 (finding the retailer to have not provided a preponderance of evidence that the transactions were innocent because the retailer did not provide itemized cash register receipts, comprehensive pricing information, SNAP recipient statements, federal business tax returns or state tax filings, nor any business banking statements – again indicating that where such documents were provided, there would be a different outcome).

- It is likely that the presence of a Confirmation Bias exists, as it does in many cases handled by FNS. The danger of Confirmation Bias is obvious: USDA starts with the theory that trafficking exists because that is allegedly what the ALERT patterns were designed to detect and if the store is flagged often enough, then the automatic hypothesis put forth by USDA that trafficking is occurring.
- The district courts have cautioned USDA in relying too heavily on numbers generated by the ALERT system: *Brooklyn Mini Market vs. U.S.*, Federal Western District of New York, 12-CF-6708; and *Skyson USDA, LLC vs. U.S.*, 2010 WL 651032 (D. Hawaii 2010).
- Recent administrative review cases discuss the precedent that should be considered in this case: *Howard's Quik Mart vs. Retailer Operations Division* and *Gloesis Group vs. Retailer Operations Division*.
- The Appellant's response of June 10, 2020 was filed prior to the FOIA response to the Appellant's May 27, 2020 FOIA request and without an abatement of this case as required by FNS, Retailer Policy and Management Division Policy Memorandum 2014-01. It is the Appellant's position that the case warrants an abatement pursuant to the FOIA provisions of the aforementioned Policy Memorandum.
- As trafficking did not occur, the Appellant requests that the permanent SNAP disqualification be reversed.
- However, in the event that FNS determines that trafficking did occur, the Appellant requests imposition of a civil money penalty pursuant to 7 CFR § 278.6(i) which states that to be considered for a CMP, a retailer must demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations.

## ANALYSIS AND FINDINGS

## **SNAP Authorization**

FNS authorized Yordi Dollar Plus Food Store LLC #1 for participation in the SNAP on November 3, 2014. During the review period of March 2017 through August 2017, Yordi Dollar Plus Food Store LLC #1 was classified as a convenience store. The owner signed a SNAP application for the store on October 2, 2014 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 an August 24, 2017 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 800 square feet in size with no additional storage area outside of public view;
- No shopping carts or hand-held baskets available for customer use;
- No storage coolers or freezers;
- Two cash registers and one EBT point-of-sale (POS) device for use in ringing-up SNAP transactions;
- One small checkout counter area partially obstructed by a display of drinks with limited check-out counter space as it has lazy Susan turn-styles for both registers;
- Had 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 were not rounded up or down at the checkout counter;
- Telephone and on-line orders were not taken and delivery was not offered;
- The four most expensive staple food items in stock were Similac infant formula at \$24.99 per 12.4 ounces; Friday’s buffalo style chicken wings at \$13.99 per 25.5 ounces; Steak-umm sliced beef steaks at \$12.99 per 21.0 ounces; and vegetable oil at \$11.99 per 96.0 ounces;
- No fresh meats, poultry, or seafood;



- A minimal variety and amount of frozen meats and poultry; no frozen seafood;
- Frozen food items included meals, ice cream, French bread pizza, waffles, vegetables, burritos, and appetizers;
- Had a limited variety and amount of infant foods and formula;
- No kitchen and hot foods were not sold;
- No deli counter and deli meats and cheeses were not sold by the pound;
- Meat items included units of canned/potted meat, hot dogs, bacon, canned fish, sausage, packaged lunch meat, and eggs;
- Dairy included milk, butter, margarine, sour cream, yogurt, and cheese;
- Fresh produce stock consisted of a few bananas;
- Other staple foods available for purchase included such items as juice, pasta, rice, cereal, baking mix, loaf bread, corn meal, buns/rolls, and canned goods;
- Much of the remaining food stock consisted of accessory foods such as candy, carbonated and non-carbonated drinks, snack foods, coffee, and sugar; and
- Ineligible nonfood items included tobacco products, health and beauty aids, paper products, household cleaning supplies, pet food, mobile phones/phone cards, housewares, party goods, toys, school/office supplies, and automotive supplies.

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.

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the most likely explanation for "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges is trafficking. Transactions having such characteristics sometimes do have valid explanations that support that they were the result of legitimate purchases of eligible food items. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited. In this case, the Retailer Operations Division determined that the Appellant's contentions did not outweigh the evidence. 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. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### **Repeat Transactions by the Same Household (Charge Letter Attachment 1)**

This charge letter Attachment documents 16 sets of transactions (43 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 10 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.

The Appellant contends that all of these transactions are the result of the store's business practices, co-shopping, and/or the habits of the SNAP clientele. In Maryland, participant benefits are issued between the 4th through the 23rd day of each month, based upon the first three letters of the SNAP recipient's last name. USDA has previously conducted research into the standard practices of participants for food purchases, and purchases made within the first seven days after receiving benefits is not unusual. In fact, on a regular basis, the participants will make significant grocery purchases from the Appellant store 5 U.S.C. § 552 (b)(6) & (b)(7)(C) of receiving the deposit in their accounts. Such patterns are supported by the "Benefit Redemption Patterns in the Supplemental Nutrition Assistance Program Final Report" (2011). Here, almost all of the transactions set forth in Attachment 1 reflect this standard shopping habit and patterns of SNAP participants.

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.

Although many SNAP households do shop early in the month as opposed to later in the month, most households do not spend all or a majority of their monthly benefit allotment in just one or two days, especially from a convenience store like the Appellant firm that has a moderate food stock, little fresh produce and does not carry fresh meats, poultry, or seafood. The February 2011 government report cited by the Appellant revealed that households most often redeemed their benefits at supermarkets and super stores with only 4% of all households never shopping in a supermarket or super store. Thus, when a supermarket or super store is available, it is highly unlikely that a SNAP recipient would conduct multiple transactions within a limited period of time or excessively large SNAP transactions at a convenience store like Yordi Dollar Plus Food Store LLC #1 with a moderate selection of staple foods.

The Appellant contends that as was noted in the 2016 study conducted by the Convenience Store News, small grocery/convenience store customers are among some of the most loyal customers when it comes to their store selection. Most visits to a store the size of Yordi Dollar Plus Food Store LLC #1 are made while the customer is on his/her way to work or school, or while running errands at night. SNAP participants (households which traditionally have more limited financial

resources) are more likely to shop regularly at a small grocery/convenience store than non-participants. A whopping 29.6% of the average store's customers have an average household income of less than \$35,000.

FNS acknowledges the statement regarding convenience store shoppers being some of the most loyal, based on the supplied 2016 study and that customers often pick-up needed items on their way to or from work or school. However, no evidence was submitted by the Appellant to support the statement that SNAP customers are more likely to shop regularly at a small grocery or convenience store than non-participants. The Appellant's claim that SNAP customers are more likely to shop regularly at a small grocery or convenience store than non-participants is located nowhere in the supplied study. This study appears to refer to all types of customers. The consumer research on convenience store core shoppers cited in the 2016 study did not address SNAP redemptions or SNAP customers.

The Appellant contends that according to the FMI U.S. Grocery Shopping Trends 2016 annual report, consumer's shopping habits trended towards an increase in the use of convenience stores, small grocers, and ethnic food stores. FNS does not question the data in the report and acknowledges that it could be possible that some people shop at the subject store regularly. However, the Appellant is using this average and or overall data to attempt to explain the questionable transactions in the charge letter. This data, however, is not specific to the subject store. This report does not mention the number of SNAP recipients, if any, included in the survey. In addition, the survey participants were located in Seattle, Washington, while the subject firm is located in Oxon Hill, Maryland. As such, the referenced report does not substantiate that trafficking did not occur at the Appellant firm.

As to whether or not co-shopping actually affected the Appellant firm during the review period, this argument is little more than conjecture. The Appellant has provided no evidence to show that co-shopping is particularly common among SNAP recipients in Oxon Hill, Maryland. If co-shopping truly impacted Yordi Dollar Plus Food Store LLC #1 as the Appellant suggests, it would stand to reason that co-shopping would affect other nearby firms as well. This would manifest itself in comparable firms having similar transaction patterns – multiple transactions from the same household in a short period of time. But this is simply not the case.

The Appellant contends that these purchases are also the result of a SNAP participant forgetting an item in his/her initial transaction and after going home, returning to the store to make a second purchase for the forgotten item. 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 14 of the 16 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 all of the 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.

The report and photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Yordi Dollar Plus Food Store LLC #1 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

store visit photos indicate that there were no signs posted advertising the availability of specials or bulk packages. In addition, there was a small checkout area partially obstructed by a display of drinks with limited check-out counter space and one EBT POS device for ringing-up SNAP purchases. There were no shopping carts or hand-held baskets available to customers for transporting food within the store. There were no conveyor belts to expedite high dollar or rapid consecutive purchases. While research reports acknowledge the rapid spending habits of SNAP participants as normal practices, it is expected SNAP benefits are expended in establishments with adequate inventory to support purchases. Such inventory was not confirmed in the subject store.

The Retailer Operation Division's analysis of shopping patterns for households listed in the charge letter Attachments shows they have ready access to transportation as evidenced by their shopping at a variety of larger food stores located nearby and at a distance from the Appellant's location, including a variety of super stores and supermarkets. It is improbable that households would choose to spend large dollar amounts at the Appellant firm if their purchases consisted solely of eligible food items that could be purchased at any of the super stores and/or supermarkets they were already regularly shopping at.

#### **5 U.S.C. § 552 (b)(7)(E).**

Unfortunately, the Appellant has not provided any evidence to show that the transactions listed in this Attachment were legitimate purchases of eligible foods. The arguments presented by the Appellant hold little weight without some kind of evidence to substantiate its claims.

#### **Excessively Large Purchase Transactions (Charge Letter Attachment 2)**

This charge letter Attachment documents 209 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 Appellant has provided several contentions with regard to the transactions in Attachment 2, including a claim that the store provides a variety and quantity of staple food items to the surrounding community such as milk, soda, chips, bacon, bread, cakes, juices, cookies, breads, frozen chicken cutlets, frozen chicken nuggets, hot dogs and additional food items. The on-site store visit by FNS found that the Appellant was sufficiently provisioned in all four staple food categories to satisfy the purchase amounts listed in the charge letter.

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 Yordi Dollar Plus Food Store LLC #1 to have purchases like those included in this Attachment to the charge letter.

5 U.S.C. § 552 (b)(7)(E).

The Appellant contends that FNS's own study, *Foods Typically Purchased by SNAP Households* (November 2016), notes that sweetened beverages and salty snacks are within the top 10 expenditures for SNAP households, as are meats and a number of other items that are offered by the store. It is therefore reasonable to expect SNAP customers to spend large amounts and/or the majority of their SNAP benefits at the Appellant store on sweetened soda and snack items, which the store is stocked with as is reflected by the FNS store visit, as well as the invoices submitted herewith (Note: No invoices were forwarded by the Appellant to FNS). In some instances, SNAP participants purchase eligible food items for multiple other persons.

It is acknowledged that the subject store does offer items that SNAP households would purchase, however, many of these items are accessory items that a SNAP customer would not purchase all the time. However, the key findings of the noted study indicate that there were no major differences in the expenditure patterns of SNAP and non-SNAP households, no matter how the data were categorized. The study noted that similar to most American households: About 40 cents of every dollar of food expenditures by SNAP households was spent on basic items such as meat, fruits, vegetables, milk, eggs, and bread; another 20 cents out of every dollar was spent on sweetened beverages, desserts, salty snacks, candy and sugar; the remaining 40 cents were spent on a variety of items such as cereal, prepared foods, dairy products, rice, and beans; and the top 10 summary categories and the top 7 commodities by expenditure were the same for SNAP and non-SNAP households, although ranked in slightly different orders.

The Appellant provided statistics pertains to the general demographic. However, there is no indication as to how this explains the questionable transaction patterns addressed in the charge letter. Many households are comprised of a diverse family dynamics, yet this is not an indication that questionable transactions would be occurring at any given store. The subject store shows unusual transaction patterns that are not occurring in other similarly or even better stocked stores. If specific family needs are causing these questionable transactions at the subject store, it would be expected that similar patterns would exist at other neighboring stores.

The Appellant contends that it is not uncommon for sales of Red Bull cases, chips, sodas and other items to be bought in bulk by the participant, who likely intends to distribute the items amongst a number of other persons. However, the FNS store visit report and photos show that Yordi Dollar Plus Food Store LLC #1 offers a moderate stock of SNAP eligible foods with no fresh meats, poultry, or seafood, a minimal variety and amount of frozen meats and poultry, no frozen seafood, only one variety of fresh produce in a limited amount, 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.

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.

The Appellant contends that the households that conducted the charge letter transactions likely have a larger amount of SNAP residents residing therein, thus requiring a larger quantity of grocery products each month than those households with less participants. Furthermore, and importantly, it is common for customers to spend larger amounts at the Appellant as a direct result of the lack of nearby alternative stores that offer sufficient inventory, discounted prices and convenience. The closest super stores are more than a half mile away, and the only supermarket is barely within a mile radius—all straight line distances. Actual walking distances are far greater. As such, it is reasonable for the Appellant's SNAP customers to spend large amounts and/or exhaust their benefits at the subject store as it offers customers the most amount of groceries for their money/SNAP benefits over any of the other local stores.

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 9 SNAP authorized retailers of a comparable size or larger, including a supermarket, located within a 1.0 mile radius of Yordi Dollar Plus Food Store LLC #1 that can meet the nutritional needs of SNAP customers. Some of these authorized SNAP stores are larger than Yordi Dollar Plus Food Store LLC #1 and offer a greater quantity and variety of food products at comparable or better prices as compared to the subject store.

The record also indicates that SNAP customers who shopped at Yordi Dollar Plus Food Store LLC #1 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 during the review period.

The Appellant contends that with regard to the alleged analysis of the store comparison, there are likely differences between the Appellant and those to which the Appellant was compared. Inventory prices, convenience of the store, and local population density play material parts in the success or failure of otherwise identical stores with identical business models. A deviation from "average" is reasonably expected. In addition, as noted in the Case Analysis Document, the subject store has a lower dollar-per-transaction average than most other stores of its category.

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.

Regarding the Appellant's contentions with respect to the reliability of the ALERT system and Confirmation Bias, 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.

#### **5 U.S.C. § 552 (b)(7)(E).**

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.

#### **Case Laws**

With regard to the case laws cited by the Appellant, it is beyond the scope and authority of this review to determine the applicability of same. This review is limited to consideration of whether or not the Retailer Operations Division duly adhered to the Food and Nutrition Act of 2008, as amended, and the implementing regulations, and whether or not the action taken is sustainable by

a preponderance of the evidence. Therefore, the application of any judicial precedent is better addressed via judicial review. Accordingly, no further findings or conclusions are rendered in this regard.

### **Abatement of Case**

The Appellant contends that the firm's response of June 10, 2020 was filed prior to the FOIA response to the Appellant's May 27, 2020 FOIA request and without an abatement of this case as required by FNS, Retailer Policy and Management Division Policy Memorandum 2014-01. It is the Appellant's position that the case warrants an abatement pursuant to the FOIA provisions of the aforementioned Policy Memorandum.

The record indicates that in a letter dated November 27, 2017, the Appellant's counsel requested information and documents from FNS with regard to the agency's case against Yordi Dollar Plus Food Store LLC #1 pursuant to the Freedom of Information Act (FOIA). In a letter dated January 8, 2018, FNS provided the Appellant's counsel with a response to the initial FOIA request. The Appellant's counsel appealed the FOIA request in a letter received on April 8, 2018. In a letter dated January 27, 2020, FNS provided the Appellant's counsel with a response to the FOIA appeal. On January 29, 2020, the Retailer Operations Division sent a 10 day letter to counsel providing the opportunity to respond to the letter of charges. The Appellant's counsel subsequently requested and was granted an extension until February 20, 2020 to provide a response to the charge letter.

The Appellant, through counsel, provided responses to the letter of charges via February 20, 2020 and March 9, 2020 correspondences to the Retailer Operations Division. The Retailer Operations Division subsequently issued a determination letter dated April 17, 2020, informing the Appellant that Yordi Dollar Plus Food Store LLC #1 was being permanently disqualified from participation in the SNAP in accordance with 7 CFR § 278.6(e)(1) for trafficking violations and that it was not eligible for a trafficking civil money penalty (CMP).

In a letter postmarked April 29, 2020, the Appellant, through counsel, 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 May 12, 2020. As noted in the May 12, 2020 acknowledgement letter, additional information in support of the request for administrative review must have been e-mailed or postmarked by June 2, 2020 and the administrative review will begin only after the time to submit additional information has passed.

In a May 27, 2020 email to the FNS FOIA office, the Appellant's counsel requested additional information and documents from FNS with regard to the agency's case against Yordi Dollar Plus Food Store LLC #1 pursuant to the FOIA. Appellant's counsel was subsequently advised that FNS is not required to hold an administrative review in abeyance upon counsel's receipt of the agency's response to the initial FOIA request. This is in accordance with SNAP Standard Operating Procedures **5 U.S.C. § 552 (b)(7)(E)**.



In a June 10, 2020 email to the Administrative Review Officer, the Appellant, through counsel, submitted additional information in support of the request for administrative review. The record does not indicate any departure from established policy or procedures with regard to the Appellant's right to a fair and thorough review. The Appellant was provided full opportunity to provide arguments in support of the subject case and the arguments presented were given due consideration in the administrative review.

### **CIVIL MONEY PENALTY**

In the event that FNS determines that trafficking did occur, the Appellant requests imposition of a civil money penalty pursuant to 7 CFR § 278.6(i) which states that to be considered for a CMP, a retailer must demonstrate that the firm had established and implemented an effective compliance policy and program to prevent violations.

In the November 14, 2017 charge letter the Appellant was informed by the Retailer Operations Division that, under certain conditions, FNS may impose a civil money penalty (CMP) of up to \$59,000 in lieu of permanent disqualification of a firm for trafficking. Per Section 278.6(i) of the SNAP regulations, four criteria must be met in order to be considered for a trafficking civil money penalty. If requesting a trafficking CMP, an Appellant must meet each of the four criteria listed and provide the documentation as specified within ten days of the Appellant's receipt of their charge letter. As specified in 7 CFR § 278.6(i), in determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following four criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in 7 CFR § 278.6(i)(1);

Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violations(s) occurred prior to the occurrence of violations cited in the charge letter;

Criterion 3. The firm had developed and instituted an effective personnel training program as specified in 7 CFR § 278.6(i)(2); and

Criterion 4. Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations.

If the Appellant's request for a trafficking CMP and the required documentation are not submitted on time, it will lose its right for any further consideration for a trafficking CMP. The SNAP regulations are specific at 7 CFR §278.6(b)(2)(iii) that "if a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified, the firm shall not be eligible for such a penalty". The regulations do not provide the agency discretion to extend the time within which documentation and evidence in support of a trafficking civil money penalty may be submitted.

In the Appellant's replies to the charge letter and in subsequent correspondence, the Appellant, through counsel, requested consideration of a civil money penalty in lieu of permanent disqualification. However, the Appellant provided no supporting documentation in support of its request.

The Retailer Operations Division determined that the Appellant was not eligible for a trafficking civil money penalty in lieu of a disqualification under 7 CFR § 278.6(i) 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. 5 U.S.C. § 552 (b)(7)(E).

## **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 Yordi Dollar Plus Food Store LLC #1 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

July 15, 2020