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 that a permanent disqualification of Stevie’s Dari Mart from participation as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) was properly imposed by the Retailer Operations Division.

ISSUE

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

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 based on an analysis of EBT transaction data from May 2016 through October 2016. This involved the following transaction patterns which are common trafficking indicators:

- There were an unusual number of transactions ending in a same cents value.
- There were multiple transactions made from individual household benefit accounts within unusually short timeframes.
• Excessively large purchase transactions were made from recipient accounts.

**CASE CHRONOLOGY**

The agency’s record shows that FNS initially authorized Stevie’s Dari Mart for SNAP participation as a convenience store on February 1, 2001. In a letter dated November 30, 2016, 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 May 2016 and October 2016. 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 within 10 days of receipt of the charge letter under the conditions specified in 7 CFR § 278.6(i).

In a telephone call on December 5, 2016 and in a letter dated December 9, 2016, the Appellant responded to the charge letter, generally denying that the firm was engaged in trafficking and arguing that while the store may not sell everything, it does carry an adequate supply of necessities, including bread, milk, cereal, frozen foods, deli meats, and other groceries. The store also sells approximately 1,500 hoagie sandwiches each month. By having these items available, it helps customers avoid an expensive trip to another store outside the area. In support of its arguments, the Appellant provided the Retailer Operations Division with a price list of the firm’s deli meats and cheeses, hoagies, and other groceries; a brief written description of the firm’s monthly sales; and a July 2016 copy of the firm’s Pennsylvania Sales and Use Tax return, showing gross sales for the month, § U.S.C. § 552 (b)(6) & (b)(7)(C).

After considering the Appellant’s replies and documentation and further reviewing the evidence in the case, the Retailer Operations Division determined that the Appellant’s explanations were not sufficient to justify the unusual transaction patterns listed in the charge letter. As a result, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated January 19, 2017. This determination 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 that a CMP was not appropriate in this case 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 1, 2017, the Appellant appealed the Retailer Operations Division’s determination by requesting an administrative review. The request was granted.

**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, 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(c) states, inter alia:

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(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, [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, 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 § 271.2 states, inter alia:
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, inter alia:
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(b)(2)(ii) states, inter alia:
Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence ... that establishes the firm’s eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

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, inter alia:
FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program... In determining the minimum standards of eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking, the firm shall, at a minimum, establish by substantial evidence its fulfillment of each of the following criteria:

Criterion 1. The firm shall have developed an effective compliance policy as specified in § 278.6(i)(1); and
Criterion 2. The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of the violations cited in the charge letter sent to the firm; and
Criterion 3. The firm had developed and instituted an effective personnel training program as specified in § 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...
APPELLANT’S CONTENTIONS

The Appellant made the following summarized contentions in its request for administrative review, in relevant part:

- The Appellant has been a member of SNAP since 1999.
- The Appellant has always followed every guideline and rule and hasn’t changed the way it does business. The firm’s employees know the guidelines.
- Appellant does not appreciate being condemned before having a chance to present its case.
- 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These even-cents transactions occur not only on EBT, but also on credit card and cash transactions. The Appellant keeps the prices easy so that the customers do not have a hard time adding their monies up.
- Some customers do anywhere from three to four transactions at a time and in a day. This is because they try to keep up with how much in SNAP benefits they have.
- The store visit contractor identified himself but never asked any questions, including questions about prices. He came into the store when the shelves were not stocked. The Appellant told him that the inventory was low, but the contractor said that was fine. It would have helped had the contractor said why he was there in the first place. The Appellant has nothing to hide and could have answered any questions.
- The firm lost everything it had in a flood in 2007. The firm is finally getting caught up and coming out of bankruptcy. Appellant realizes that this does not affect the decision, but mentions it to show that it doesn’t give up just because of a setback. Appellant owner has nothing going for him self except his family and his store. He works over 80 hours a week in order to provide for them.
- Appellant cannot tell customers how to spend their money. It is not allowed to ask for identification for EBT users. These customers give their cards out to whoever they want. It is not the Appellant’s job to judge the way they spend their money. It simply supplies their grocery needs.
- Appellant would love for the contractor to come to the store on a busy day and see the way the SNAP customers spend their money; see how many people use the same card; see all the junk food they purchase. It is free money to them.
- A lot of customers use the EBT card the right way, but many abuse it.
- Customers are experiencing hardship as a result of the disqualification just like the Appellant is. They have nowhere to shop, and even the local grocery store has higher prices.
- The firm has already lost a lot of business because the EBT machine has been shut off, and it stands to lose a lot more.
- Appellant feels that it was judged poorly and did not appreciate being criminalized before having the chance to prove itself.
- The store was boycotted in the summer because of Appellant owner’s stance in the election. Appellant hopes that this was not the reason why someone felt it was a good thing to speak up for a reason that is nonsense.
- Appellant hopes that FNS sends someone to see the neighborhood before feeling a need to penalize the Appellant for something it did not do.

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 contentions presented, including any not specifically summarized or explicitly referenced herein.

ANALYSIS AND FINDINGS

The primary issue for consideration in a case based on 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 questionable 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 an October 28, 2016 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 ascertain 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:

- Stevie’s Dari Mart is a convenience store, approximately 2,115 square feet in size, operating in a suburban, residential area of Aliquippa, Pennsylvania.
- At the time of the visit, the firm had no shopping carts or shopping baskets for customer use.
- The store visit photographs show one cash registers, while agency records indicate the use of one EBT point-of-sale device.
- The store does not appear to use optical scanners to process transactions.
- The store’s staple food stock is marginal in each of the four staple food categories. The store also sells SNAP-eligible, non-staple accessory food items, such as carbonated and uncarbonated drinks, snacks, candy, and condiments. Additionally, the store sells ineligible nonfood items, such as tobacco products, lottery tickets, and other miscellaneous household merchandise.
- The store appears to sell deli meat and cheese by the pound, as there are a few blocks of meat and cheese items in a display cooler, but there is otherwise no signage indicating that such items are sold at the store. No prices are posted inside the store.
- The store also sells prepared foods that are ready for immediate consumption. The contractor’s report shows a stock of hoagie sandwiches ready for purchase and there is a small kitchen area where hot and cold food items are prepared. The contractor obtained a menu of the hot food items, which includes chicken wings, dinner baskets, hot sandwiches, and a variety of appetizers, such as French fries, onion rings, fried zucchini, chicken tenders, jalapeño poppers, etc. Prices on the menu generally run between $2.99 and $6.99. Slightly more expensive is an order of one dozen whole chicken wings, which sells for $7.50. Customers may also order from the “party menu,” which includes sandwich rings, a three-foot sandwich, and orders of 50 to 100 chicken wings. The latter appears to be the most expensive prepared food item: 100 wings for $50.00. It should be
noted that all hot foods are ineligible for purchase with SNAP benefits.

- The checkout area consists of a small countertop (roughly 18 inches by 30 inches) where items can be placed to be rung up. The cramped checkout area is not suitable for conducting large or rapid transactions as there is no conveyor belt to expedite the purchase and not enough space to place more than a few small items at one time.

- There is no indication from the store visit report that the firm has a special pricing structure, although judging by the photographs and the hot food menu, most items in the store appear to end in 9, such as $0.99, $2.99, etc. It is noted that there are a few items ending in other amounts, such as $0.25 for a single-serve size bag of chips, or $2.00 for a larger bag of chips.

- The contractor’s report and photographs also noted empty or sparsely stocked shelves, a broken cooler, and Slush Puppy and cappuccino machines that were out of order. There were also three tables and approximately 10 chairs where customers could sit to eat their prepared food items.

The available inventory of SNAP-eligible food items at the time of the visit showed stock that would be typical of a convenience store. Based on the limited staple food inventory, there was no indication that SNAP households would be inclined to regularly visit the store to purchase large quantities of grocery items. The available food was primarily of a low-dollar value and there was no hint that the firm sold any high-priced meat or seafood bundles or other bulk items. Given the available inventory, there was very little sign that the firm would be likely to have SNAP redemption patterns that differed significantly from those of similar-sized competitors.

**SNAP Transaction Analysis**

Charge Letter Attachment 1: There were an unusual number of transactions ending in a same cents value. This attachment lists 167 transactions – 5 U.S.C. § 552 (b)(6) & (b)(7)(C) in SNAP benefits. When such repetitive patterns are not supported by any kind of special pricing structure at the store, they are a strong indicator of trafficking in SNAP benefits.

In its original response to the charge letter, the Appellant provided a list of grocery items and their prices. The list included deli meats and cheeses, hoagie sandwiches, frozen pizza, and “Stevie’s Wing Dust Jarred Seasoning.” The deli meats and cheeses ranged in price from $4.99 per pound for chopped ham to $7.99 per pound for pepperoni and turkey. Hoagies were priced between $3.50 and $6.00, while a three-food hoagie was listed at $25.00. A 32-oz. jar of “wing dust” seasoning cost $8.99, and frozen pizza was listed at $8.50.

In its request for administrative review, the Appellant argued that even-dollar pricing is common at the store. It contends that FNS could go back to when the firm was originally authorized and see exactly how many transactions end 5 U.S.C. § 552 (b)(6) & (b)(7)(C). According to the Appellant, these even-cents transactions occur not only on SNAP purchases, but also on credit card and cash transactions. The Appellant contends that it keeps its prices “easy” so that the customers do not have a hard time adding up their purchases.

Unfortunately, the Appellant’s contentions seem to contradict themselves. On one hand, the Appellant implies that even-dollar transactions are very common. On the other hand, the vast
majority of prices on the price list end in 9, particularly .99. It is statistically unlikely that various items ending in .99, added together, would result in an even-dollar transaction.

It should be noted that during the six-month review period, the Appellant conducted nearly 5,000 SNAP transactions. If even-dollar pricing was as common as the Appellant suggests, one would expect to see many more than 167 even-dollar transactions. Unfortunately, the Appellant has offered no actual evidence, such as cash register transactions, to show what was actually purchased in the transactions listed in Attachment 1. Without such evidence, and considering that most prices in the store do not appear to be posted as even-dollar amounts, it is reasonable for this review to conclude that trafficking was a likely reason for the unusually high number of transactions ending in a same-cents value.

While it cannot be definitively said that every transaction listed in Attachment 1 was a trafficking violation it is the determination of this review that the Appellant’s explanation and lack of evidence do not sufficiently justify the unusual patterns identified in this attachment. Therefore, it is the determination of this review that the same-cents transactions cited in Attachment 1 are more likely than not the result of trafficking.

Charge Letter Attachment 2: Multiple transactions were made from individual benefit accounts in unusually short time frames. This attachment lists nine sets of transactions (25 transactions in all) in SNAP benefits, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Violating stores often conduct multiple transactions from the same household account in a short period of time to avoid the detection of single high-dollar transactions that cannot be supported by the retailer’s inventory, store type and structure.

The transactions cited in Attachment 2 are noteworthy because they are highly irregular and stand out significantly from normal shopping patterns at convenience stores such as Stevie’s Dari Mart. As noted earlier, the store visit photographs show a small store with a marginal amount of staple food inventory, most of which are low-priced products or snack food items. The photos offer no legitimate explanation for why SNAP customers would shop at the store on multiple occasions in a narrow window of time while spending very large dollar amounts, in SNAP benefits, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Such repetitive and large transactions at a sparsely stocked convenience store are highly irregular and not consistent with normal shopping patterns of SNAP recipients.

The Appellant contends that customers will conduct as many as three or four transactions during a single visit or will shop at the store many times a day. According to the Appellant, customers shop in this manner so that they can keep up with how much is left in their SNAP account. The Appellant also implies that SNAP customers share their cards and that many people can be seen using the same EBT card. The Appellant also contends that it cannot tell customers how to spend their money and cannot ask for identification to ensure that the proper person is using the card. With regard to the contention that the firm may not dictate how customers use their cards, it is recognized that SNAP 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 store or which household members may use the card. However, the transactions noted in Attachment 2 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 Attachment 2 are not marginally abnormal, but decidedly so, especially in comparison with other nearby SNAP-authorized stores. This review does not contend that repetitive 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.

It is further noted that the Appellant offered no evidence, such as itemized cash register receipts, to prove that the transactions identified in Attachment 2 were legitimate purchases of eligible food. It should also be noted that if, as the Appellant contends, households regularly make repeat visits to a store because it is easier to keep track of their benefits that way, then it stands to reason that other nearby stores would have similar transaction patterns. But that is simply not the case. In comparison with four nearby convenience stores, Stevie’s Dari Mart had more than 10 times as many questionable, repetitive transactions in the six-month review period than the other four stores combined.

Additionally, agency records indicate that there at least 20 comparable or larger SNAP-authorized retail stores within two miles of Stevie’s Dari Mart, including one superstore and two supermarkets. With such shopping availability in the immediate area, it makes little sense that a household would spend large dollar amounts in rapid succession in a store that has limited inventory and no shopping carts or baskets to accommodate large transactions.

Given the common practice of violating retailers breaking up large, suspicious transactions from the same household into multiple, somewhat smaller transactions to avoid detection, a firm’s explanation for why these repetitive transactions are occurring in a convenience store should be both rational and compelling. The Appellant's contentions in this regard are neither.

Charge Letter Attachment 3: Excessively large purchase transactions were made from recipient accounts. This attachment lists 131 SNAP transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C). These large transactions are not consistent with a convenience store in the state of Pennsylvania. The Retailer Operations Division has determined that during the review period, the average SNAP transaction amount for a convenience store in Pennsylvania was $7.31. 5 U.S.C. § 552 (b)(7)(E).

Given that the Appellant firm does sell a small variety of staple foods as well as some eligible accessory foods, such as soft drinks and snacks, it is probable that there would be an occasional purchase where the transaction amount is high, 5 U.S.C. § 552 (b)(6) & (b)(7)(C). However, as noted earlier, there is no evidence that the firm would be likely to have SNAP redemption patterns that differ considerably from similar-sized competitors, especially considering the lack of high-priced food items and the absence of shopping carts and baskets to help transport large amounts of food. The substantial number of high-dollar purchases in a six-month period calls into question the legitimacy of these transactions.

The charge letter indicates that there were 36 transactions 5 U.S.C. § 552 (b)(6) & (b)(7)(C), which is highly unusual for a convenience store with only a moderate amount of staple food
inventory and no shopping carts or baskets to help customers carry the merchandise.

The Appellant did not offer specific contentions related to the transactions listed in Attachment 3, but gave a related argument by stating that the store was not fully stocked when the contractor arrived to visit the store. This implies that the firm’s customers made large purchases that essentially cleared the store of its inventory. The Appellant stated that it would love for the contractor to visit the store on a busy day and see the way SNAP customers spend their money and see all of the junk food they purchase.

Unfortunately these arguments, without any corroborating evidence or documentation, do not constitute valid grounds for dismissal of the current charges of violations. The only evidence supplied by the Appellant included a price list of deli meats and hoagie sandwiches, a written description of the firm’s sales, and a copy of the firm’s Pennsylvania Sales and Use Tax return for the month of July 2016, showing gross sales for the month 5 U.S.C. § 552 (b)(6) & (b)(7)(C). This evidence does little to explain the patterns of unusual transactions listed in the charge letter attachments. Inventory records and copies of itemized cash register receipts might have provided some insight to not only show that the firm had sufficient inventory to accommodate the large transactions, but also to show that the specific transactions listed in the charge letter were legitimate purchases of eligible food. Without such documentation, this review has little alternative but to conclude that the unusually large transactions were likely the result of trafficking.

Based on the above analysis, it is the determination of this review that the Retailer Operations Division has satisfactorily demonstrated that Stevie’s Dari Mart likely trafficked in SNAP benefits. Similarly, the Appellant has failed to sufficiently rebut such a claim. The attachments furnished with the charge letter adequately identify the irregular patterns of SNAP transactions which indicate that trafficking was likely taking place at the firm during the review period. Conversely, the Appellant has failed to provide a rational explanation as to why such patterns might exist. As there are multiple unexplained patterns of irregular transactions, the case of trafficking is convincing.

No Prior Violations

The Appellant contends that it has been an authorized retailer in SNAP since 1999, has always followed every guideline and rule, and hasn’t changed the way it does business. The Appellant further argues that its employees also know the guidelines. This argument implies that the disqualification should be dismissed or reduced because the Appellant has been compliant with SNAP rules in the past.

Unfortunately, the Appellant’s pronouncement of compliance does not provide a valid basis for dismissing the charges or for mitigating the penalty imposed. The law is clear that when serious violations, such as trafficking, occur, permanent disqualification is the required penalty, even on the first occasion, as noted in 7 U.S.C. § 2021(b)(3)(B).
Hardship to Appellant and SNAP Recipients

The Appellant contends that its customers will experience hardship as a result of the disqualification. It claims that its customers will have nowhere to shop, and that even the local grocery store has higher prices. Additionally, the Appellant contends that it has already lost a lot of business because its EBT machine has been shut off, and stands to lose a lot more if the permanent disqualification is upheld.

With regard to the contention that the Appellant’s customers will be adversely affected if the firm is disqualified, it is recognized that some degree of inconvenience to SNAP households is likely whenever a SNAP-authorized store is disqualified and a household is forced to use its benefits elsewhere. Regulations at 7 CFR § 278.6(f) do allow, in some circumstances, for a civil money penalty to be imposed in lieu of disqualification when there is an absence of other SNAP-authorized retailers in the area. However, as noted earlier, agency records reflect more than 20 comparable or larger SNAP-authorized stores located within two miles of the Appellant firm, including a superstore and two supermarkets. The regulations are also clear that a civil money penalty for hardship to SNAP households may not be imposed in lieu of permanent disqualification for trafficking.

As for the assertion that the firm would suffer financially if the disqualification were to be upheld, Federal statute at 7 U.S.C. § 2021(b)(3)(B) makes it clear that disqualification for trafficking shall be permanent, even on the first occasion. It is recognized that some degree of economic hardship is a likely consequence whenever a store is disqualified from participation in SNAP. However, there is no provision in the SNAP regulations for waiver or reduction of an administrative penalty on the basis of possible economic hardship to either the ownership personally or to the firm resulting from the imposition of such a penalty.

To allow store ownership to be excused from being assessed administrative penalties based on a purported economic hardship to the store’s ownership or to the firm itself would render virtually meaningless the provisions of the Food and Nutrition Act of 2008 and the enforcement efforts of the USDA. Moreover, giving special consideration to economic hardship to the firm would forsake fairness and equity, not only to competing stores and other participating retailers who are complying fully with Program regulations, but also to those retailers who have been disqualified from the Program in the past for similar violations.

Therefore, the Appellant’s contentions that its customers will be adversely affected and that the firm may incur economic hardship based on the assessment of a disqualification do not provide a valid basis for dismissing the charges or for mitigating the penalty imposed.

Opportunity for Appellant to Present its Case

Twice in its request for administrative review, the Appellant argued that it was “condemned” or “criminalized” before having an opportunity to present its case or to prove that it had not committed the violations listed in the charge letter. Unfortunately, there is no evidence whatsoever to support this claim. Rather, the opposite is true. On Page 2 of the charge letter, it states:
SNAP regulations Section 278.6(b) explain your right to reply to the charges, and Sections 278.6(c) through (m) describes the procedures we will follow in making a decision in this case. If you wish to present any information, explanation, or evidence you have regarding these charges, you must reply within 10 calendar days of the date you receive this letter. You may reply either by phone or in writing. You may have legal counsel assist you in presenting your reply...

Further, the regulation at 7 CFR § 278.6(b)(1) states that “any firm considered for disqualification … shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination.” [Emphasis added.]

The record clearly shows that the Appellant was given the opportunity to reply to the charges as required by regulation. The record further shows that the Appellant did respond and that the Retailer Operations Division considered the response prior to making a disqualification determination.

Therefore, this review finds the Appellant’s claim that it was not given a fair opportunity to present its case to be wholly without merit and does not provide a valid basis for dismissing or modifying the charges.

**Boycott of the Store**

The Appellant owner claims that because of his stance in the most recent general election, some members of the community boycotted his store. He hopes that his political positions did not contribute to the trafficking charges, implying that perhaps an accusation or complaint by someone who disagreed with him politically may have been a factor in the allegations of SNAP violations.

This review can find no evidence to support the Appellant’s claim that the trafficking charges may have been politically motivated, nor did the Appellant offer any evidence of such. As best as can be determined the primary basis for the Retailer Operations Division to charge the Appellant with trafficking was its analysis of the Appellant’s EBT transaction record. There is no evidence of any complaints by community members and no evidence that the Retailer Operations Division was even aware of the Appellant’s political viewpoints.

**Civil Money Penalty**

As noted earlier, the Retailer Operations Division determined that the firm was not eligible for a civil money penalty in lieu of permanent disqualification pursuant to 7 CFR § 278.6(i) because it did not submit sufficient evidence to demonstrate that the firm 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 civil money penalty to be considered, a firm must not only notify FNS that it desires the agency to consider a CMP in lieu of permanent disqualification, but the firm must also submit appropriate documentation within designated timeframes. Based on a review of the case record, there is no evidence that the Appellant
requested a CMP in lieu of disqualification when it responded to the charge letter. As best as can be determined, the Appellant also made no mention of a trafficking CMP nor submitted any documentation to support its eligibility of a CMP in any portion of its request for administrative review. Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii), it is the determination of this review that the Appellant is not eligible for a civil money penalty in lieu of permanent disqualification for trafficking.

CONCLUSION

The Retailer Operations Division’s analysis of the Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Stevie’s Dari Mart from SNAP participation. The data from the charge letter attachments provided sufficient evidence that the questionable transactions during the review period had characteristics that were consistent with trafficking in SNAP benefits. Government analyses of stores caught in trafficking violations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges.

In the absence of any reasonable explanation or documentation for such transaction patterns, a conclusion can be drawn through a preponderance of the evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the charge letter point to trafficking as the most likely explanation. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did occur as determined by the Retailer Operations Division. As such, the decision to impose a permanent disqualification against the Appellant, Stevie’s Dari Mart, 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.

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
July 19, 2017