

Pennsylvania's Efforts to combat fraud in the Supplemental Nutrition Assistance Program

Testimony of
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Members of the committee, thank you for the opportunity to provide testimony on behalf of the Commonwealth of Pennsylvania, Office of Inspector General.

The Office of Inspector General (OIG) has as one of its core missions to combat fraud, waste, abuse, and misuse within Commonwealth-administered federal and state governmental benefit programs. The Supplemental Nutrition Assistance Program (SNAP) is one of the many benefit programs administered by the Pennsylvania Department of Public Welfare (Department) for which the OIG has jurisdiction to oversee its appropriate receipt and use by recipients of welfare benefits.

The Commonwealth of Pennsylvania divides the responsibility for administering the SNAP between the Department and the OIG as separate agencies, with the responsibility for approving applicants for SNAP, administering ongoing benefits, developing program standards, and calculating overpaid SNAP benefits resting with the Department. The OIG has as its responsibility to investigate instances of suspected fraud from the application stage through investigating overpaid benefits and to hold those individuals responsible either criminally or civilly. It does this through several fraud control programs: The Field Investigation, Fraud Investigation, and SNAP Trafficking Programs. In addition, the OIG operates a bureau which conducts programmatic reviews of Department programs, which can include SNAP.

This written testimony will speak to the OIG's fraud control efforts with specific regard for SNAP, but it is nevertheless difficult to speak to its efforts without first identifying the program integrity measures the Department takes to ensure SNAP benefits are appropriately distributed. It is also important to discuss the integral collaborative partnership the OIG has with the Department and its ongoing efforts to ensure SNAP, as well as all other program benefits, are distributed appropriately.

Department of Public Welfare

SNAP Authorization

The Department is responsible to take applications for SNAP benefits, review information and authorize applicants for benefits. The Department renews recipients in the program through annual re-applications and acts on all reported changes which affect ongoing benefits. The

Department will act on information, either through reported changes, Department verifications, or information received by the OIG to reduce/close (stop) benefits and will calculate an overpayment claim if the information indicates one occurred.

The Department engages in many fraud control measures at application and for ongoing recipients of SNAP. Specifically, the Department uses the Income Eligibility Verification System matches to ensure applicants are providing true, correct, and complete information such as employment and past criminal history. The Department also verifies applicants' identifying information, such as Social Security Number, to ensure benefits are authorized appropriately.

If during the application stage, during an ongoing case, or at reapplication the Department finds reason to suspect fraud, or has inconsistent or incomplete information, it will make an investigative referral to the OIG. The OIG will investigate the circumstances of the investigative referral and inform the Department of its findings. The Department also refers all established overpayments to the OIG for review, possible investigation, and collection activities.

Program Integrity Measures

The Department embarked on an exhaustive, comprehensive, and enterprise-wide Program Integrity Initiative to identify the processes/controls, policies, technology, performance measures, and organizational structures currently in place to identify, eradicate, and monitor fraud, waste, and abuse. The result of this innovative initiative is a complex strategic plan that is being implemented. Key priorities for 2012 include:

- Increased recoveries of overpayments
- Improved quality control processes
- Tighter application intake controls
- Streamlined fraud referral processes
- Enhanced provider accountability
- Focused program integrity performance measures to drive decision making
- Implementing information technology solutions that will target front-end detection.

Additionally, the Department is creating Program Integrity Intake Units to handle high-risk client applications. These units in the County Assistance Offices will be dedicated to reviewing high-risk applicants prior to eligibility determination. When new applicants are flagged for these high-risk criteria, staff will refer the case to the Program Integrity Intake Units. The units will investigate the application and take action as necessary prior to establishing eligibility. The units will make referrals of suspected fraud or contradictory or incomplete information to the OIG.

The Department developed and implemented an internal process to monitor Electronic Benefit Transfer (EBT) card usage. Specifically, the Department directed staff to identify suspicious EBT card usage patterns, such as out-of-state transactions, with the intention of developing a strategic plan that includes policies and procedures for reviewing EBT-related reports on a consistent basis and utilizing trend analysis to identify high-risk areas that require further review and/or referrals to the OIG.

Like other state health and human services agencies, the Department is vulnerable to fraud through EBT card replacement. In a September to December 2010 study, the Department found:

- DPW issued nearly 150,000 replacement cards
- Approximately 30,000 recipients were issued their 10th or greater replacement card
- Approximately 8,100 recipients were issued their 20th or greater replacement card
- One recipient received his or her 88th replacement card

The Department currently deducts \$2.50 per replacement card from the recipient's EBT card balance. 7 C.F.R. Part 274.12(g)(5)(v) limits states to charging recipients only the cost to produce cards. The Department would like to partner with the United States Department of Agriculture – Food and Nutrition Service to increase the fee for habitual offenders and charge it directly to the recipient rather than deducting it from the card balance. This effort would require a policy change by the federal government or a waiver of the current policy.

The Department and the OIG have an ongoing relationship with respect to program and fraud control processes. In 2011, the OIG appointed a Special Assistant to the Inspector General to act as a liaison between the OIG and Department for mutual affairs. The Special Assistant works directly with the Department on all of the Department's Program Integrity Initiatives, lending it the perspective gained from the OIG's fraud investigations.

Office of Inspector General

As mentioned above, the OIG operates several fraud control programs with respect to SNAP which involve its Bureau of Fraud Prevention and Prosecution (BFPP). The office of Special Assistant to the Inspector General on DPW Affairs is also vital to the OIG's overall scope of operations and commitment to combating fraud in the SNAP.

The OIG is not only responsible to conduct investigations concerning fraud in the SNAP, but it is also the state agency which collects all overpaid Department monies, regardless of fraudulent intent. Pursuant to federal regulation 7 CFR § 273.18, Claims Against Households, all overpaid SNAP benefits, no matter if the overpayment is due to client error or administrative error, must be collected. OIG follows the federal regulations to collect this civil federal debt, to include pursuing payment of delinquent claims through the United States Treasury Department's Treasury Offset Program, which intercepts federal payments such as tax returns or Social Security Administration payments to pay off delinquent SNAP debt. In Fiscal Year 2010-2011, the OIG civilly collected \$6,847,254 in overpaid SNAP benefits.

Bureau of Fraud Prevention and Prosecution

BFPP investigates SNAP fraud along with all other forms of public welfare fraud such as cash, medical, and subsidized child care assistance. Often SNAP fraud investigations are combined with other forms of assistance as the recipient received multiple benefits simultaneously. Its referrals come from the Department, the federal government, and the community through tips and complaints.

BFPP's Policy Division is also responsible to write and maintain the SNAP Claim Management Plan which is the document it provides to the USDA/FNS on how the SNAP overpayment claim process operates in Pennsylvania, from the establishment of the overpayment to collection of overpaid benefits.

BFPP's main investigative programs are the Field Investigation, Fraud Investigation, and SNAP Trafficking Programs:

Field Investigation Program

The objective of the Field Investigation Program is to conduct investigations of applicants and recipients of welfare benefits to verify circumstances which may affect benefit authorization or retention of ongoing benefits at their current level.

- OIG Welfare Fraud Investigators (Investigators) receive referrals from Income Maintenance Caseworkers at the Department's County Assistance Offices and District Offices. Investigators also receive tip complaints from the public. Investigators may self-generate referrals if they witness welfare fraud in the community.
- The Investigators' primary goal is to address the circumstance for the referral or tip, which could be anything from questionable household composition or unreported employment, to questionable residency.
- Investigators complete their investigations and submit their findings back to the referring caseworker or, if a tip or self-generated referral, to the caseworker managing the caseload of the recipient. Based on the Investigators' findings, the Department will take the appropriate action on the application or the ongoing caseload, to include denying the application or closing authorized benefits, reducing the amount of authorized benefits, or taking no further action.
- Based on the results of the determination by the Department, if there is a negative impact to benefit authorization or ongoing retention, BFPP will calculate an amount of cost avoidance based on the specific benefits being applied for or that a recipient is receiving, which were either denied/closed or reduced.
- For State Fiscal Year 2010-2011, BFPP:
 - Conducted 22,308 Field Investigations where SNAP benefits were involved.
 - Total cost avoidance for the program was \$19,121,447.

Fraud Investigation Program

The objective of the Fraud Investigation Program is to investigate overpaid welfare benefits and determine if the cause of the overpayment was the recipient's willful intent to defraud the program or their failure to report a material fact. Caseworkers calculate the overpayment claims and forward to BFPP either electronically or manually. BFPP Claims Investigation Agents (Agents) review these overpayments and identify ones for further investigation.

The Fraud Investigation Program is broken down into two sub-components with respect to SNAP benefits: The Prosecution Program and the Administrative Disqualification Hearing Program.

- **Prosecution Program**

- The Agents will receive overpayments electronically from the OIG's Avoidance and Recovery System (OARS), review all overpayment claims, and assign certain overpayment claims based on their review for further investigation. The Agent's primary responsibility is to investigate the basis for the overpayment claim and gather all necessary evidence to substantiate the three elements of welfare fraud.
 - The three elements of welfare fraud are:
 - A recipient's knowledge of their responsibility to report changes which affect their benefits,
 - Receipt of welfare benefits, and
 - A willful false statement or failure to report a material fact.
 - All welfare fraud charges, including SNAP, are filed under Pennsylvania Statute 62 § 481. Failure to Report. Federal regulation 7 CFR § 273.16 stipulates program disqualification for those who plead or are found guilty for SNAP fraud.
- The Agent, upon completion of his or her investigation, will draft a private criminal complaint, affidavit, and report of investigation and submit the file to the supervisor for review and either approval, denial, or direction for further investigation. Upon approval, the Agent will schedule a meeting with the respective county district attorney's office to present the case and gain the district attorney's office approval. Once approved by the district attorney's office, the Agent will file the charges with the local magisterial district justice office that has appropriate jurisdiction and proceed to a preliminary hearing.
- Possible results aside from a guilty plea or a found guilty verdict are commonly the Accelerated Rehabilitative Disposition program, or a settlement which dismisses charges with satisfaction of restitution and agreement for program disqualification. For all dispositions aside from a guilty plea or a found guilty verdict, the defendant is required to sign a Disqualification Consent Agreement, which upon approval from the court for deferred adjudication or dismissal agreement, will allow the OIG to impose a program disqualification on the individual.
- Disqualifications for successful prosecutions are based on the number of program violations the defendant has. The penalties increase with the number of violations. Disqualification penalties are only imposed on defendants to the criminal matter and will not affect benefits received by other household members.

- For SNAP, the disqualification penalty steps are 12 months for the first, 24 months for the second, and permanently for the third. There are circumstances for increased penalties, such as falsifying identity to obtain Food Stamps in two states, which carries a 10 year disqualification for the first violation. The OIG follows federal regulation 7 CFR § 273.16 for appropriate disqualification of individuals from the SNAP.
- All defendants, regardless of the outcome of a court proceeding, are responsible for full repayment of the overpaid monies and the OIG will not negotiate an overpayment amount in pursuit of disposing the criminal case.
- In State Fiscal Year 2010-2011, BFPP:
 - Conducted 3,335 overpayment claim investigations.
 - Filed 613 criminal complaints which involved SNAP benefits.
 - Asserted a total restitution amount of \$1,496,245.
 - Disqualified 822 individuals as a result of its program which resulted in \$1,645,566 in cost savings from preventing further program participation.
- A few examples of criminal prosecution cases are below:
 - Schuylkill County investigation uncovered a recipient who fraudulently received more than \$42,900 in child care and SNAP benefits. The defendant failed to report that the father of her children resided within her residence and that he was employed. The defendant pleaded guilty, was sentenced to 48 months probation, ordered to pay court costs, fines, and full restitution, and was disqualified from the programs.
 - Berks County investigation uncovered a recipient who fraudulently received more than \$5,450 in SNAP benefits by failing to report the receipt of child support from the Berks County Domestic Relations Office. The defendant was sentenced to two years probation, 24 hours community service, ordered to pay full restitution and fines, and was disqualified from the program.
 - Lehigh County investigation uncovered a recipient who fraudulently received more than \$5,800 in cash assistance and SNAP benefits by failing to report employment and income. The defendant was sentenced to one year probation, ordered to pay full restitution and costs, and was disqualified from the programs.
 - Northampton County investigation uncovered a recipient who fraudulently received more than \$6,350 in SNAP benefits by failing to report a mandatory household member's employment and income. The defendant was sentenced to 23 months probation, ordered to pay full restitution, costs, and fines, and was disqualified from the program.
 - Dauphin County investigation uncovered a recipient who fraudulently received more than \$19,200 in SNAP and subsidized childcare benefits by

misrepresenting household composition. The defendant was sentenced to 48 months probation, ordered to pay full restitution, costs, and fines, and was disqualified from the programs.

- **Administrative Disqualification Hearing (ADH) Program**

- The ADH Program is a civil hearing process for overpayment claims which meet the three elements of welfare fraud and are investigated identically to a criminal case, but are decided for a number of reasons to be processed civilly rather than criminally.
- ADH's are heard before an Administrative Law Judge with the Department's Bureau of Hearings and Appeals. The ADH is a formal process similar to a criminal court hearing. The results of the ADH are binding to both parties. A hearing decision for the Commonwealth will include repayment of the overpayment and program disqualification pursuant to applicable federal regulations.
- In State Fiscal Year 2010-2011, BFPP:
 - Conducted 180 ADH investigations which involved SNAP.
 - Received 172 waivers of the ADH.
 - Asserted a total restitution amount of \$322,463.
 - Disqualified 172 individuals as a result of its program which resulted in \$496,477 in cost savings from preventing further program participation (amount includes cost savings from SNAP Trafficking disqualifications).

- **SNAP Trafficking Program**

- BFPP provides investigative services to the U. S. Department of Agriculture – Food and Nutrition Services (FNS) and to the USDA – Office of Inspector General (USDA-OIG), by conducting SNAP Trafficking investigations. SNAP Trafficking occurs when SNAP benefits are fraudulently exchanged for cash, services, credit or anything other than food. Clients access their SNAP benefits via an Electronic Benefits Transfer (EBT) Card, which is similar to a bank debit card. BFPP staff review transaction logs of suspected stores and interview clients who used their EBT card in that store to attempt to get corroborating evidence of trafficking.
- **FNS – PA-OIG relationship**
 - FNS provides the PA-OIG with various reports identifying potential SNAP trafficking activity. These reports include the Anti-Fraud Locator EBT Retailer Transactions (ALERT) Report, showing suspicious EBT card transactions; FNS charge letter, detailing allegations of SNAP trafficking against a SNAP retailer; Store Survey Report; Store Redemption History Report, showing redemption history of a particular store; Competing Store Survey, showing annual food sales comparisons with other stores in the same geographic area; and when appropriate, the retailer's signed voluntary

disqualification from SNAP. These FNS reports are based on the following parameters:

- Excessive number of transactions ending in the same cents value.
 - Consecutive transactions conducted within unreasonably short time frames.
 - Multiple transactions involving the same recipient account.
 - Unreasonable depletion of food stamp benefit balances of \$100 or more.
 - Unreasonably large SNAP benefit transactions for the store size.
 - Admittance statements from recipients, if applicable.
- BFPP staff review the various FNS reports and SNAP benefit transcripts to select potential Intentional Program Violation (IPV) cases for further investigation. Transactions not specifically made for food form the basis of the BFPP's IPV claim.
 - Clients who are found, through an Administrative Disqualification Hearing, signed waiver, or court disposition, to have trafficked their SNAP benefits must repay those benefits and are disqualified from receiving SNAP benefits.
 - Stores are disqualified by FNS as a result of their proactive data monitoring of suspicious EBT card transactions, tip allegations referred to them from the OIG's Welfare Tip Line, or collaborative efforts involving mass recipient interviews to obtain voluntary admissions of trafficking when confronted with suspicious card activity.
 - With an increased focus on integrity of services and programs, FNS has ramped up the referral of stores for review and investigation, which will lead to a greater number of investigations by BFPP and increased cost savings in this program. Currently, BFPP has approximately 200 stores referred by FNS for review and investigation which involve numerous potential recipients who have trafficked their SNAP benefits.

– USDA-OIG – PA-OIG relationship

- The USDA-OIG provides the PA-OIG with documentation following the successful investigation and prosecution of a retailer for trafficking. These documents may include the retailer's sworn statement admitting to serious violations of SNAP; court documentation verifying the retailer was convicted in United States District Court of SNAP Trafficking; the retailer's guilty plea, if appropriate; the retailer's sentencing sheet.
- Clients identified by the USDA-OIG of having used their EBT card fraudulently during retailer investigations and subsequent prosecutions are

reviewed by BFPP and either sent to an Administrative Disqualification Hearing, criminal prosecution, or no claim is established.

- Recently, the USDA-OIG been working with PA-OIG to develop a new project with the USDA-OIG to specifically identify recipients who may have trafficked in stores where the owner has been prosecuted for trafficking. The project intent is to have the USDA-OIG provide a list of recipients to BFPP who would then investigate and seek statements from the recipients who trafficked at the identified store. Under the proposed project, BFPP would provide a list of recipients who admitted to trafficking at the store to the USDA-OIG who would potentially use the recipients as cooperating witnesses to build a stronger case for federal prosecution of store owner. BFPP would, in turn, receive details of the federal prosecution from the USDA-OIG to use in state prosecution or Administrative Disqualification Hearings of those recipients.
- In Fiscal Year 2010-2011, BFPP:
 - Conducted 584 trafficking investigations.
 - Scheduled 158 ADH's for trafficking, with total restitution asserted of \$258,375.
 - Received 77 waivers of the ADH.
 - Asserted a total restitution amount of \$117,809.
 - Disqualified 77 individuals as a result of its program which resulted in \$496,477 in cost savings from preventing further program participation (amount includes cost savings from normal SNAP ADH disqualifications).
- A few examples of SNAP Trafficking Program investigations are as follows:
 - BFPP received numerous tips regarding a store trafficking SNAP benefits. The tips were forwarded to the FNS for review and the store was subsequently permanently disqualified from the SNAP effective March 17, 2011 for trafficking. BFPP received the recipient transactional data and is currently pursuing Administrative Disqualifications on those individuals believed to have trafficked their SNAP benefits. As of February 2012, five recipients have been disqualified from the SNAP for trafficking their SNAP benefits at this store and has scheduled another thirteen recipients for Administrative Disqualification Hearings.
 - A deli and grocery store was permanently disqualified from the SNAP on April 26, 2010. As of February 2012, fourteen recipients were disqualified from the SNAP for trafficking their SNAP benefits at this store.

Inspector General Kenya Mann Faulkner Commonwealth of Pennsylvania



Kenya Mann Faulkner serves as the Inspector General of the Commonwealth of Pennsylvania since January 18, 2011.

From 2007 to January 2011, Ms. Faulkner was a partner in the Litigation Department at the Philadelphia office of Ballard Spahr LLP. At Ballard Spahr, she conducted complex internal investigations for governmental agencies and nonprofit companies and was also a member of the White Collar Litigation Practice Group. Ms. Faulkner has extensive experience in federal and state courts as well as significant jury trial experience, both as a criminal defense attorney and as a federal prosecutor.

Ms. Faulkner also served as an Assistant United States Attorney in the Eastern District of Pennsylvania, where she successfully prosecuted numerous complex fraud cases; a Philadelphia city councilman accused of bribery and corruption; and a New Jersey millionaire convicted in one of the largest-ever international sex-tourism cases. During her tenure at the U.S. Attorney's Office, she also prosecuted physicians and lawyers for Medicaid and insurance fraud. Ms. Faulkner has experience prosecuting public corruption, procurement fraud, and auditing and accounting matters.

Additionally, Ms. Faulkner was a Senior Deputy Attorney General in the Pennsylvania Attorney General's Drug Strike Force Section. As a Senior Deputy Attorney General, she prosecuted complex drug cases and physicians for illegally dispensing prescription drugs. Before joining the Attorney General's Office, Ms. Faulkner was a Philadelphia public defender.

Ms. Faulkner was appointed to the Philadelphia Independent Board of Ethics, where she served from February 2008 to June 2010. She is also the recipient of the Assistant Attorney General's Award for Protecting Children Internationally (2007) and the Director's Award for Superior Performance by a Litigative Team (2010) and was selected as one of the Diverse Attorneys of the Year by *The Legal Intelligencer* (2011).

Ms. Faulkner received her bachelor's degree in criminal justice and English from Niagara University and her juris doctor from the State University of New York, University of Buffalo Law School. Ms. Faulkner is married and has 3 step-children and 4 grandchildren.