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HB 1434

Department of Human Services – Electronic Benefits Transfer Cards – Restoration of Benefits Hearing of The House Appropriations Committee

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UNFAVORABLE

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Health and Benefits Equity Project advocates to protect and expand access to healthcare and safety net services for Marylanders struggling to make ends meet. We support policies and practices that are designed to eliminate economic and racial inequities and enable every Marylander to attain their highest level of health. **PJC respectfully opposes HB 1434 as drafted**, which would strip the requirement for the Maryland Department of Human Services (DHS) to reimburse a beneficiary for any benefits lost due to theft. It would also require the Department to reimburse all eligible theft claims on or before December 31, 2025 that occurred between January 1, 2021 to September 20, 2024, thus eliminating DHS' obligation to reimburse eligible theft claims occurring during the time period without limitations.

While we do not support HB 1434 as drafted, **PJC would support striking the bill language in its entirety and replacing it with the proposed amendment below** to create a workgroup to address financial sustainability of the program and implementation challenges of the existing law.

HB 1434 would break Maryland's promise to reimburse victims of food and cash assistance benefits theft less than one year after that promise was made.

We thank this Committee for the groundbreaking work it did in protecting benefits recipients by passing HB 2, Prevent Electronic Benefits Theft Act of 2023, a bill drafted in collaboration by DHS and advocates. When unsuspecting EBT cardholders swipe their cards in Point of Service machines, their card number and PIN was then cloned and used to drain funds from their account from any state. Victims would file police reports with their local police department only to be told that the department would not investigate the crime. Families with young children, seniors and individuals with disabilities were left feeling violated and struggling to make ends meet. Their trauma was compounded further by the previous Administration's cruel policy decision to not replace these stolen benefits. However, as a result of this Committee's dedication to bring justice and equity to

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theft victims, Maryland became the first state in the country to provide the right to reimbursement for stolen food and cash assistance benefits, and DHS has reimbursed more than \$18 million to over 30,000 households.

The Prevent Electronic Benefits Theft Act reimburses food and cash assistance benefits like, SNAP, TCA and TDAP which are entitlement programs. HB 1434, if passed, would undo the tremendous progress that Maryland has made in ensuring that Marylanders can feed themselves and their families, keep the lights on, and pay for other utilities after their benefits are stolen. By conditioning the right to reimbursement on whether DHS has funds available, HB 1434 would essentially strip the right to reimbursement for benefits to which the recipients are entitled by law, putting Marylanders living in poverty back in the same position they were in under the previous administration. Further, by placing a deadline on the right to seek reimbursement, HB 1434 would create an unintentional race to reimbursement for theft victims. Given DHS' lack of direct community outreach and education on the new law, we anticipate that many theft victims may never receive reimbursement for their stolen benefits.

DHS did not fully implement the Prevent EBT Theft Act until February 2024, denying eligible households the right to full reimbursement as well as benefits pending their administrative appeal.

Maryland has the strongest reimbursement law in the country as a result of DHS and advocates working together to put forward a consensus bill. However, there were early implementation challenges that resulted in wrongful denials of reimbursement to eligible households. In 2023, after the Prevent EBT Theft Act was signed into law, PJC represented Vanessa Fleeton, a Prince George's county resident who had nearly \$2,500 of SNAP benefits stolen from her EBT account. Though she was entitled to full reimbursement of her stolen benefits under the new law, DHS only reimbursed her \$46 (\$23 for two months) per its policy to provide no more than two reimbursements at the households current monthly allotment in a fiscal year. Additionally, DHS did not provide Ms. Fleeton with her right to receive her benefits in the amount stolen while she waited for her administrative hearing. At her administrative hearing, the administrative law judge upheld DHS' decision with no reference to the explicit requirements entitling her to full reimbursement under the new law. Ultimately, Ms. Fleeton did not receive her full reimbursement of her stolen benefits until PJC advocated on her behalf and secured a settlement with DHS. The Baltimore Banner covered Ms. Fleeton's story and her traumatic journey towards full reimbursement.¹ Ms. Fleeton's story is devastating but was not a unique experience for benefits recipients. Prior to February 2024 when DHS changed its policy, PJC and other legal services providers observed numerous instances of DHS denying reimbursement and not providing benefits pending appeal to households that were eligible.²

HB 1434 does not address the actual problem – the lack of security protection for EBT cards.

We haven't taken the necessary action to prevent Marylanders like Ms. Fleeton from having their benefits stolen again. Despite clear directives and guidance under the new law to prevent theft by strengthening security

¹ Brenna Smith, The Baltimore Banner, *Maryland Isn't Paying Back All the Stolen SNAP Benefits It Should* (December 14, 2023), <https://www.thebaltimorebanner.com/politics-power/state-government/snap-benefits-denied-department-of-human-services-DNWM5HEI5JHDLIJE52RO5WP2DM/>.

² Brenna Smith, The Baltimore Banner, *Welfare Benefits Stolen? Follow This Guide to Get Your Money Back* (February 8, 2024), <https://www.thebaltimorebanner.com/politics-power/state-government/maryland-department-of-human-services-welfare-benefits-stolen-X3FMLAI4QREYBJY4IEBCEAAQ4Y/#:~:text=The%20Maryland%20Department%20of%20Human%20Services%20will%20now,also%20to%20properly%20inform%20them%20of%20their%20rights.>

features for EBT cards, DHS has made minimal progress in this area. DHS rolled out an EBT card lock and unlock feature last year, but there is little public awareness of this feature and the new security enhancement has grave technical issues. PJC and our allies have encountered numerous community members who do not know that this feature exists as DHS has not done any direct community outreach on the security enhancement. However, benefits recipients are being locked out of their accounts when they attempt to reset their passwords, leaving them unable to use the app and defeating its purpose to protect their benefits from theft. In addition, the most critical security feature outlined under the new law - microchips for EBT cards - has still not been implemented. HB 1434 does not speak to the security issues that, if addressed and effectively implemented, would finally secure EBT cards to a level similar to that of credit and debit cards issued by banks and prevent theft. This would significantly reduce the money DHS would spend in the future on reimbursements, thus addressing their core concerns. PJC believes it is premature and bad public policy to rescind the right to reimbursement for benefits theft victims before DHS takes significant steps to prevent the theft from occurring in the first place.

PJC proposes an amendment to strike the current language and replace it with a reimbursement and theft prevention workgroup.

While we understand that the intention of HB 1434 is to manage the financial expenditures that DHS makes in reimbursing theft claims, PJC cannot support HB 1434 in its current form as it takes away the right to reimbursement for entitlement programs and does not prevent theft or address the implementation challenges our clients have experienced under the new law. We urge the committee to transform HB 1434 into a workgroup that includes DHS, advocates and directly impacted community members to develop an action plan and recommendations to 1) identify sustainable sources of funding for reimbursement pending federal and state action on preventing theft through security enhancements and 2) addressing implementation challenges Marylanders have experienced under the existing law. We offer the amendment below for the committee's consideration.

For these reasons, the Public Justice Center urges the committee to issue an **UNFAVORABLE** report for **HB 1434**. If you have any questions about this testimony, please contact Ashley Woolard at 410-625-9409 ext. 224 or woolarda@publicjustice.org.

Proposed Amendment

Strike all bill language and replace with:

- (a) There is a Prevent Electronic Benefits Theft Act of 2023 Workgroup.
- (b) The workgroup consists of the following members:
 - (1) Member of the House designated by the Speaker of the House of Delegates;
 - (2) Member of the Senate designated by President of the Senate;
 - (3) The Secretary of the Department of Human Services or their designee;
 - (4) At least two community-based organizations that provide education, outreach and support to individuals applying for food or cash assistance benefits;
 - (5) At least one legal services provider that provides direct representation to individuals in administrative hearings on food and cash assistance benefits before the Office of Administrative Hearings; and
 - (6) At least two directly impacted individuals who have experienced benefits theft or are current recipients of food or cash assistance benefits.

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- (c) Each member appointed to the workgroup shall be a resident of the State.
- (d) The Secretary of the Department of Human Services shall designate the chair of the Workgroup.
- (e) The Workgroup shall determine:
 - (1) The manner in which a vice chair and secretary will be designated; and
 - (2) The duties of the vice chair and secretary.
- (f) The chair and vice chair:
 - (1) May designate additional members to serve on the workgroup if considered necessary by the chair and vice chair; and
 - (2) a majority of the members serving on the Advisory Group at the time of a meeting is a quorum.
- (g) The workgroup shall meet at least three times in 2024 at the times and places determined by the workgroup.
- (h) The Department shall designate staff for the workgroup.
- (i) The workgroup shall:
 - (1) Identify funding sources and mechanisms at the state and federal level to sustain reimbursement of eligible theft claims pending action on the state or federal level to enhance the security of EBT cards and prevent theft;
 - (2) Identify systemic barriers to reimbursement of eligible theft claims experienced by households and develop a plan to ensure compliance with state law by local DSS offices;
 - (3) In collaboration with the Office of Administrative Hearings, develop a plan to disseminate information and education on state reimbursement law to administrative law judges in Maryland to ensure rulings on theft claim appeals are consistent with applicable state and federal laws;
 - (4) Continue to study availability of security enhancements for EBT cards and develop a plan to enhance security protections for EBT cards, including:
 - (i) providing identity access protections to protect an eligible beneficiary against identity fraud and theft, which may include multi factor authentication and microchipping cards; and
 - (ii) resolving technical issues with existing security protections, such as card lock and unlock features, with vendors.
 - (5) Develop a plan for outreach to underserved communities, including individuals experiencing housing instability and households without access to internet, regarding their rights under state law.
 - (6) Make additional recommendations, including legislative, regulatory or other policy initiatives, regarding response to and prevention of theft of food and cash assistance benefits.
- (j) On or before December 1, 2024, the Workgroup shall report its findings and recommendations to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly.