



HOMELESS PERSONS REPRESENTATION PROJECT, INC.

201 North Charles Street, Suite 1104 Baltimore, MD 21201 (Headquarters)

P.O. Box 1787, Rockville, Maryland 20849 (Satellite Office)

(410) 685-6589 www.hprplaw.org

Testimony in Opposition of HB 1434 Department of Human Services – Electronic Benefits Transfer Cards – Restoration of Benefits House Appropriations Committee, March 5, 2024

HPRP is a non-profit civil legal aid organization that provides free legal services to Marylanders who are experiencing homeless or at risk of homelessness on issues that create barriers to housing and economic stability. HPRP provides free legal services through offices serving Baltimore City, Montgomery County, and Prince George’s County, and advocates for policies that will prevent and end homelessness statewide. HPRP’s Economic Justice Program represents individuals and families who receive Supplemental Nutrition Assistance Program (SNAP), Temporary Cash Assistance (TCA) and Temporary Disability Assistance Program (TDAP) in administrative appeals and advocacy. Many of HPRP’s clients have experienced theft of benefits from the Electronic Benefits Transfer (EBT) card through no fault of their own.

On April 24, 2023, Governor Moore signed into law the Prevent Electronic Benefits Theft Act of 2023 (HB 502 / SB 2 from 2023). HPRP appreciates the work and collaboration of the Administration, General Assembly, Department of Human Services, advocates and people with lived experience to ensure Marylanders who are victim to food and cash benefit theft have strong protections in Maryland law to be made whole, including receiving full reimbursement of stolen benefits. Over \$20 million in stolen food and cash benefits have been reimbursed to over 31,000 households in Maryland.¹ Replacing stolen benefits reduces childhood poverty: 44% of victims of benefit theft in Maryland are children.² The law is working well to make victims of theft whole quickly after theft occurs, minimizing the harm caused by benefit theft.

HPRP opposes HB 1434 because it would change reimbursement of stolen benefits from an entitlement to a discretionary program conditioned on appropriated funds. HB1434 would add language to current law to make reimbursement, “subject to the limitations of the state budget” and without requiring a minimum annual required appropriation. Under HB1434, if an annual appropriation proves inadequate to cover reimbursement needs for the entire fiscal year, a low-income family whose benefits are stolen would not receive reimbursement. While we appreciate that the current Administration has been proactive in replacing stolen benefits, HB1434 would allow a future administration to appropriate no funds for reimbursement and victims of theft would be denied reimbursement claims and left with no food or income for the month. Prior to the passage of the Prevent Electronic Benefits Theft Act of 2023, HPRP worked with countless victims of theft who faced eviction, utility shut off, and hunger when their benefits were stolen and not replaced.

¹ Data from the Department of Human Services on reimbursement in Maryland as of February 8, 2024.

² MD Department of Human Services, “Electronic Benefits Transfer Cards – Theft of Benefits,” (12/4/23), report to General Assembly pursuant to MD Code, Human Services, § 5-609(f) at page 13. According to the report, there were 36,736 children who experienced theft of food and cash benefits between March 1, 2023 to October 31, 2023.

Reimbursement of stolen benefits must continue to be an entitlement under Maryland law. Programs like Supplemental Nutrition Assistance Program (SNAP), Temporary Cash Assistance (TCA), and Temporary Disability Assistance Program (TDAP) are entitlement programs. For all recipients who meet the eligibility criteria, “benefits are a matter of statutory entitlement” and not simply a “privilege” or a “right.”³ Reimbursement of stolen benefits is also an entitlement under Maryland law: if the Department issues benefits to an EBT card but benefits are intercepted and stolen by an unauthorized third party before the eligible household can spend them, then the Department must replace the benefit in the amount stolen.⁴ The statutory entitlement to reimbursement operates similar to other state funded safety net programs, for example TDAP and the state SNAP supplement for adults 62 and older.⁵

Maryland must address the root cause of theft by strengthening the security of EBT cards. To date, the EBT cards in Maryland still lack the smart chip technology that would render the card “much more difficult and expensive...to clone.”⁶ EBT cardholders do not have the same protections when theft occurs as compared to people whose money is on a bank debit or credit card. The magnetic strip on the EBT card, without the microchip technology, make it an inferior financial product and more vulnerable to theft. The Department has not implemented many of the specific security enhancements included in the uncodified language of the Prevent Electronic Benefits Theft Act of 2023, such as: “the inclusion of an embedded microchip in all Electronic Benefits Transfer cards issued on or after October 1, 2023,” limiting transactions during certain hours or prohibiting out-of-state transactions; and “monitoring transactions for suspicious activity by leveraging user behavior analytics of Electronic Benefits Transfer user data to detect when data is being inappropriately accessed or is compromised.”⁷ According to the Department, Maryland will not have chip technology on the EBT card before June 2025.⁸ Security enhancements, such as smart chip technology and the ability of the card holder to prevent out of state purchases, would make EBT cards less vulnerable to theft and significantly reduce the cost of reimbursement.

HPRP welcomes continued collaboration with the Department of Human Services. HPRP appreciated the opportunity to collaborate with Department leadership in the launching of benefit reimbursement applications, testing the pilot online application, outreach materials and implementation. We have communicated to the Department concerns over full implementation and compliance with the law.⁹ We are committed to working with the Department, General

³ *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970).

⁴ MD Code, Human Services, § 5-609(b)(2)(ii).

⁵ See e.g. SNAP supplement for adults 62 and older at MD Code, Human Services, § 5-501(d); see also TDAP at MD Code, Human Services, § 5-5B-03 (“...an applicant is entitled to assistance under this subtitle...”).

⁶ Brian Krebs, “How Card Skimming Disproportionately Affects Those Most in Need,” (October 18, 2022) available at <https://krebsonsecurity.com/2022/10/how-card-skimming-disproportionally-affects-those-most-in-need/>

⁷ See HB 502 from 2023 MD General Assembly; see also MD Department of Human Services, “Electronic Benefit Transfer Cards – Theft of Benefits” (December 4, 2023), report submitted to MD General Assembly pursuant to Human Services §5-609(f) at 2-3.

⁸ *Id.* at 3.

⁹ HPRP appreciates that the Department recently announced it will stop limiting and capping reimbursement based on when a theft is reported, the number of claims made, and total amount of stolen benefits, as well as the Department’s commitment to review previously denied claims to determine if households are eligible for reimbursement under the law. See MD Department of Human Services, Family Investment Administration Action Transmittal #24-31, “Supplemental Information Regarding AT 23-09 Restoration of Stolen Benefits – Phase III,” (issued 2/6/24), available at <https://dhs.maryland.gov/documents/FIA/Action%20Transmittals-AT%20-%20Information%20Memo-IM/AT2024/24-31%20AT-%20PHASE%20III%20RESTORATION%20OF%20STOLEN%20BENEFITS.pdf>

¹⁰ U.S. Department of Health and Human Services, Office of Family Assistance, Office of the Administration for Children & Families, “Supporting Families Who Are Victims of EBT Theft Due to Card Skimming, Cloning, and

Assembly, advocates and people with lived experience of benefit theft to effectively engage in community outreach on benefit reimbursement and reducing the vulnerability of EBT cards to theft. While there is already funding for reimbursement budgeted through FY25, we are open to participating in a workgroup or task force to identify additional funding for benefit reimbursement in the future. For example, Federal Temporary Assistance for Needy Families (TANF) funds can be used to replace stolen TCA benefits. In a memo dated March 29, 2023, the federal Office of Family Assistance stated, “We encourage states to use non-recurrent, short-term benefits (NRSTs) to help families whose TANF benefits have been stolen by fraudulent means.”¹⁰ According to the Department of Legislative Services Analysis of the DHS FY25 Budget Overview, at the close of FY23, Maryland had \$47.2 million in unspent TANF funds and by the end of FY25, there is expected to be \$35.9 million.¹¹ Maryland could use this surplus to cover reimbursement of stolen TCA if it needed to in the future.

HPRP strongly urges the Committee to issue an unfavorable report on HB 1434. If you have any questions, please contact Michelle Madaio (she/her), Director – Economic Justice at (410) 716-0521 or mmadaio@hprplaw.org.

Similar Fraudulent Methods” (3/29/23), available at <https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-pi-2023-02>

¹⁰ U.S. Department of Health and Human Services, Office of Family Assistance, Office of the Administration for Children & Families, “Supporting Families Who Are Victims of EBT Theft Due to Card Skimming, Cloning, and Similar Fraudulent Methods” (3/29/23), available at <https://www.acf.hhs.gov/ofa/policy-guidance/tanf-acf-pi-2023-02>

¹¹ Department of Legislative Services, Department of Human Services Fiscal 2025 Budget Overview, (January 2024), Exhibit 5, page 20, “Availability of TANF Funding,” available at <https://mgaleg.maryland.gov/pubs/budgetfiscal/2025fy-budget-docs-operating-N00-DHS-Overview.pdf>