

No. 127712

IN THE
SUPREME COURT OF ILLINOIS

AYESHA CHAUDHARY,)	Appeal from the Appellate Court
)	of Illinois, Second District
Plaintiff-Appellee,)	No. 2-20-0364
)	
v.)	There on Appeal from the Circuit
)	Court of DuPage County
ILLINOIS DEPARTMENT OF)	No. 19-MR-1341
HUMAN SERVICES and GRACE B.)	
HOU, In Her Official Capacity as)	The Honorable
Secretary of Human Services)	Bonnie M. Wheaton,
)	Judge, Presiding.
Defendants-Appellants.)	

**BRIEF OF *AMICI CURIAE* SHRIVER CENTER ON POVERTY LAW,
EQUIP FOR EQUALITY, LAND OF LINCOLN LEGAL AID, LEGAL AID
CHICAGO AND LEGAL COUNCIL FOR HEALTH JUSTICE
IN SUPPORT OF PLAINTIFF-APPELLEE AYESHA CHAUDHARY**

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

STATEMENTS OF INTEREST OF THE *AMICI CURIAE*..... 1

***AMICI’S POSITION ON THE ISSUE IN THIS CASE*..... 3**

STATEMENT OF FACTS..... 4

ARGUMENT..... 4

The importance of the SNAP program and the high risk of erroneous deprivation to the claimant supports placing the burden on DHS to establish an overpayment..... 4

A. The SNAP program provides vital food assistance to low-income people and is designed to provide a minimal level of food to prevent malnutrition..... 4

Food Stamp Act of 1964, Pub. L. No. 88-525, § 2, 78 Stat. 703 (1964)..... 4

USDA, FNS, *Supplemental Nutrition Assistance Program Participation and Costs* (May 2022), <https://fns-prod.azureedge.us/sites/default/files/resource-files/SNAPsummary-5.pdf>..... 5

Danielle Wilson & Liana Fox, *SNAP Moved 3.2 Million People Out of Poverty in 2018* (Dec. 2019), <https://www.census.gov/library/stories/2019/12/supplemental-poverty-measure-shows-state-level-impact-of-food-stamps.html>..... 5

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Brynne Keith-Jennings *et al.*, *Links of the Supplemental Nutrition Assistance Program with Food Insecurity, Poverty, & Health: Evidence & Potential*, *Am J. Public Health*, Vol. 109, No. 12 at 1637 (Dec. 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6836787/pdf/AJPH.2019.305325.pdf> 6

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B. The burden of proof should rest with the Department given the high risk of erroneous deprivation of SNAP benefits for recipients, and the life-impacting consequences that would follow..... 8

Goldberg v. Kelly, 397 U.S. 254 (1970)..... 8, 9

1. In Illinois, all types of overpayments are pursued aggressively, even where no fault or wrongdoing is alleged, threatening the economic stability of low-income recipients..... 10

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89 Ill. Admin. Code § 165.104.....	13
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2. SNAP appellants are often unrepresented, disadvantaging them in formal administrative hearings..... 16

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3. Bias permeates all aspects of public benefits administration, particularly prejudicing recipients of color..... 18

Johnnie Tillmon, *Welfare is a Women's Issue*, Ms. (originally published Spring 1972, republished From the Vault, March 25, 2021) <https://msmagazine.com/2021/03/25/welfare-is-a-womens-issue-ms-magazine-spring-1972/>..... 18

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C. The risk of erroneous deprivation of the Department’s ability to collect overpayments is comparatively low..... 23

1. SNAP recipients must navigate heavy administrative burdens to be certified as eligible, reducing the risk of overpayment..... 23

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2. The Department has multiple data tools available to prevent overpayments..... 25

820 ILCS 405/1801.1(b)..... 25

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3. Even if an erroneous hearing decision deprives the Department of the ability to collect an overpayment, the consequences to the Department are minimal..... 27

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7 C.F.R. § 273.18(k) (2022)..... 27

STATEMENTS OF INTEREST OF THE AMICI CURIAE

Amicus curiae **Shriver Center on Poverty Law** (Shriver Center) is a non-profit legal and policy advocacy organization based in Chicago that fights for racial and economic justice. For the past 54 years, the Shriver Center has worked to ensure that all people have access to vital resources and programs that provide for their basic needs and advance their long-term well-being and opportunity. Through our work on behalf of, and in partnership with, low-income Illinoisans, we have developed deep expertise in anti-hunger programs, most notably the SNAP program. The Shriver Center plays a leadership role both in the state anti-hunger space and in the national anti-poverty community and has a compelling interest in maintaining access to vital safety net programs like SNAP.

Amicus curiae **Equip for Equality** (EFE) is a private, non-profit organization designated by the Governor of Illinois to implement the federally mandated Protection and Advocacy System. Our mission is to advance the human and civil rights of people with disabilities in Illinois. In pursuit of our goal of tackling common problems affecting people with disabilities, EFE undertakes a combination of strategies that include public policy and legislative reform, class action and individual litigation, informal advocacy and legal counseling, and watchdog reports on public institutions. We also file *amicus* briefs in support of disability rights. EFE has a strong interest in ensuring that Illinoisans with disabilities, who are disproportionately below the poverty line, can obtain access to life-changing public benefits like SNAP.

Amicus curiae **Land of Lincoln Legal Aid** is a non-profit whose mission is to provide free high quality civil legal services to low-income and senior residents in 65 counties of central and southern Illinois in order to obtain and maintain their basic human needs. Through advice, representation, advocacy, education, and collaboration, Land of Lincoln seeks to achieve justice for those whose voices might otherwise not be heard, to empower individuals to

advocate for themselves, and to make positive changes in the communities it serves. For 50 years, Land of Lincoln has represented thousands of SNAP applicants and beneficiaries in seeking and maintaining SNAP benefits, as well as applicants and beneficiaries of other state and federal public benefits programs. With our long history, we are very familiar with the experiences of persons trying to navigate the complicated public benefits landscape including administrative hearings. Land of Lincoln has a compelling interest in ensuring that low-income families and individuals in our service territory receive the SNAP benefits to which they are entitled.

Amicus curiae **Legal Aid Chicago** provides free legal representation and counsel to clients living in poverty or otherwise vulnerable, securing their rights to economic stability, affordable housing, personal safety, fair working conditions, and basic healthcare. Through litigation and other advocacy, Legal Aid Chicago strives to secure economic stability for its clients while addressing poverty's root causes. Each year Legal Aid Chicago's lawyers and non-lawyer advocates represent thousands of clients in a wide range of civil legal matters, including public benefits, immigration, workers' rights, housing, and education. Legal Aid Chicago also advocates for its client communities by combatting policies that systemically entrench poverty and inequality. For decades, Legal Aid Chicago's advocates have represented individuals seeking to establish and maintain eligibility for a variety of safety net programs, including in administrative hearings like the one at issue in this appeal. With this wealth of experience, Legal Aid Chicago brings a deep understanding of the stigma, unfair bias, and other barriers that people often face when seeking to access life-sustaining safety net programs, including challenges posed by an administrative hearing process that can be daunting and confusing to litigants, and which can result in wrongfully disqualifying eligible individuals and families from programs intended to help them. Legal Aid Chicago has a strong interest in ensuring that

safety net programs serve their purpose, and effectively help vulnerable people meet their families' basic needs.

Amicus curiae **Legal Council for Health Justice** (Legal Council) is a 30-year-old non-profit public interest law organization that uses the power of the law to secure dignity, opportunity, and well-being for all. Legal Council engages in litigation and policy advocacy to ensure individuals and communities can access affordable health coverage, public benefits, housing assistance, and special education services, without facing barriers due to illness or disability. Legal Council has a compelling interest in ensuring that Illinoisans can obtain necessary supports, including access to life-changing public benefits like SNAP.

AMICI'S POSITION ON THE ISSUE IN THIS CASE

Amici Shriver Center, Equip for Equality, Land of Lincoln Legal Aid, Legal Aid Chicago, and Legal Council for Health Justice strongly support upholding the appellate court's decision in this case. *Amici's* extensive experience representing Illinoisans in obtaining and maintaining Supplemental Nutrition Assistance Program ("SNAP") benefits has shown us firsthand that recipients of income-restricted programs such as SNAP are at a cognizable disadvantage throughout the appeals process, and that the loss of, for example, access to adequate food causes them visceral and far-reaching harm. For these and other reasons discussed below, the Illinois Department of Human Services ("the Department") must bear the burden to prove its allegation at every stage of the process, including appeal.

Both equity and due process support assigning the Department the burden of proof. Food insecurity, economic instability, and worse health outcomes all flow from SNAP benefit loss or reduction, making the impact on individuals devastating and long-lasting, and highlighting that the Department's allegations of overpayment must be well-supported. Further, SNAP appellants are often unrepresented by counsel and must advocate for themselves in a hearing against

Department staff that have familiarity with hearing practice, fluency with the complex rules of the program, and access to technology, databases, and other tools that provide meaningful advantages in their advocacy on behalf of the Department. In addition, SNAP recipients who are Black, non-English speaking, or are from religious or ethnic backgrounds that are different from the Department's staff or Administrative Law Judge also face implicit racism and cultural bias, particularly in cases where family relationships, cultural norms, and expected behaviors influence decisions about credibility and evidence. Considering all of these factors, it follows that the Department must be able to demonstrate the accuracy of its allegations from the moment it first raises them in a notice through every stage of appeal. Any other approach to this burden jeopardizes the health, wellness, and economic stability of low-income Illinoisans and harms us all.

ARGUMENT

The importance of the SNAP program and the high risk of erroneous deprivation to the claimant support placing the burden on DHS to establish an overpayment.

A. The SNAP program provides vital food assistance to low-income people and is designed to provide a minimal level of food to prevent malnutrition.

SNAP is the nation's largest and most important anti-hunger program. Congress created the SNAP Program (formerly the Food Stamps program) in 1964, declaring the purpose of the program was to "safeguard the health and well-being of the Nation's population and raise the levels of nutrition among low-income households." Food Stamp Act of 1964, Pub. L. No. 88-525, § 2, 78 Stat. 703 (1964). Congress sought to decrease hunger and malnutrition by developing a program to assist recipients in obtaining "a greater share of the Nation's food abundance." *Id.* Fifty-eight years later, SNAP remains a critical part of the social safety net, helping an average of 41.5 million people meet their basic food needs

each month in 2021. See USDA, FNS, *Supplemental Nutrition Assistance Program Participation and Costs* (May 2022), <https://fns-prod.azureedge.us/sites/default/files/resource-files/SNAPsummary-5.pdf>. SNAP is broadly available to individuals and families with low incomes, providing critical nutrition assistance that helps people meet their day-to-day needs.

SNAP has been proven to reduce poverty, alleviate hunger, and promote positive health outcomes in all age groups. SNAP lifted an average of 3.5 million people a year out of poverty between 2016-2018. Danielle Wilson & Liana Fox, *SNAP Moved 3.2 Million People Out of Poverty in 2018* (Dec. 2019), <https://www.census.gov/library/stories/2019/12/supplemental-poverty-measure-shows-state-level-impact-of-food-stamps.html>. Children under 18 represent the largest percentage of SNAP recipients, and in 2017, SNAP reduced child poverty by 2 percent, lifting 1.5 million children out of poverty. Liana Fox & Laryssa Mykta, *Supplemental Poverty Measure Shows Who Benefits from Government Programs* (Sep. 2018), <https://www.census.gov/library/stories/2018/09/supplemental-nutrition-assistance-program-lifts-millions-out-of-poverty.html>. Further, SNAP excels at meeting its primary purpose – reducing hunger. A White House study in 2015 found that, among households who receive SNAP, food insecurity¹ rates are up to 30 percent lower than they would be if those same households did not receive SNAP. Executive Office of the President, *Long-Term Benefits of the SNAP* at 17-18 (Dec. 2015), <https://obamawhite>

¹ Households are classified as food insecure when they lack the money or other resources necessary to have consistent and dependable access to enough food for all their members. Executive Office of the President, *Long-Term Benefits of the SNAP* (Dec. 2015), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/SNAP_report_final_nonembargo.pdf. USDA further classifies food-insecure households as those with “low food security” (where households report reduced quality, variety, or desirability of diet, without indication of reduced food intake overall) or “very low food security” (where households report multiple indications of disrupted eating patterns and reduced food intake). *Definitions of Food Security*, USDA (Apr. 22, 2022), <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/>.

[house.archives.gov/sites/whitehouse.gov/files/documents/SNAP_report_final_nonembargo.pdf](https://www.house.archives.gov/sites/whitehouse.gov/files/documents/SNAP_report_final_nonembargo.pdf).

SNAP has also been linked to a wide range of positive health impacts for children, pregnant women, adults, and older adults. Children receiving SNAP report better health status than their counterparts who are not recipients, and the income support provided through SNAP renders their households less likely to sacrifice healthcare to pay for other necessary expenses. Brynne Keith-Jennings *et al.*, *Links of the Supplemental Nutrition Assistance Program with Food Insecurity, Poverty, & Health: Evidence & Potential*, *Am J. Public Health*, Vol. 109, No. 12 at 1637 (Dec. 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6836787/pdf/AJPH.2019.305325.pdf>. Children on SNAP are more likely to access preventative healthcare, less likely to miss school because of illness, and will have lower risk of obesity, heart disease, and diabetes as adults. *Id.*; *see also* Erin Bronchetti *et al.*, *Local Food Prices, SNAP Purchasing Power, & Child Health* (Apr. 2019), <https://gspp.berkeley.edu/assets/uploads/research/pdf/Bronchetti-Christensen-Hoynes-JHE-2019.pdf>. Similar to children, adults receiving SNAP made fewer visits to physician's offices and were less likely to miss work because of illness. *Id.* For older adults, SNAP participation is strongly correlated with reduced likelihood of hospitalization, with one study showing a 46 percent reduction in the likelihood of hospitalization among food insecure older adults participating in SNAP compared to low-income older adults who were non-participants. *Id.* at 1638.

Despite the proven value of the program, SNAP benefits are modest. In FY 2019, the average SNAP allotment per recipient in Illinois was a mere \$135.00 a month, or approximately \$4.44 per day. Center of Budget and Policy Priorities, *Illinois, Supplemental Nutrition Assistance Program* at 2 (Apr. 2022), https://www.cbpp.org/sites/default/files/atoms/files/snap_factsheet_illinois.pdf. While without SNAP, recipients would be entirely unable to meet their

nutritional needs, many report that their SNAP is insufficient to avoid hunger. Even before the pandemic, roughly half of all households participating in SNAP remained food insecure. Steven Carlson *et al.*, *More Adequate SNAP Benefits Would Help Millions of Participants Better Afford Food* at 1 (Jul. 2021), https://www.cbpp.org/research/food-assistance/more-adequate-snap-benefits-would-help-millions-of-participants-better#_edn99. When asked directly, food insecure participants say they need roughly \$10 to \$20 more per person each week to buy just enough food to meet their needs. Craig Gundersen *et al.*, *Reconstructing the Supplemental Nutrition Assistance Program to More Effectively Alleviate Food Insecurity in the United States*, Russell Sage Found. J. Soc. Scis. 113, at 121-124 (Feb. 2018), <https://www.jstor.org/stable/pdf/10.7758/rsf.2018.4.2.06.pdf>. Researchers estimating the minimal cost of a nutritionally adequate meal in every county found that even maximum monthly SNAP benefits fall short of the cost of the average low-income meal by roughly \$11 per person per week (about \$46.50 a month). Elaine Waxman *et al.*, Urban Institute, *How Far Do SNAP Benefits Fall Short of Covering the Cost of a Meal?* at 9 (Feb. 2018), https://www.urban.org/sites/default/files/publication/96661/how_far_do_snap_benefits_fall_short_of_covering_the_cost_of_a_meal_2.pdf.

Given the modest benefit amounts, even relatively small reductions in benefits resulting from an erroneous overpayment determination can be devastating for SNAP recipients, reducing their ability to feed themselves and their families, exposing them to negative health consequences that flow from food insecurity, and preventing them from meeting other necessary expenses such as housing or childcare.

B. The burden of proof should rest with the Department given the high risk of erroneous deprivation of SNAP benefits for recipients, and the life-impacting consequences that would follow.

When determining where to place the burden of proof in an administrative hearing derived from appeal of a SNAP overpayment, the court should consider the risk of an erroneous hearing determination to both the SNAP recipient and the Department – and the gravity of the consequences that flow from such a deprivation. Assigning the burden of proof to the Department to justify its decision to reduce or terminate benefits is consistent with principles of due process and balancing the equities involved. At the core of due process rights is the entitlement to a fair hearing before the government may deprive a recipient of an important benefit. *See Goldberg v. Kelly*, 397 U.S. 254 (1970). To have a fair, *de novo* hearing on a SNAP overpayment, the burden of proof must be assigned to the Department.

Goldberg recognizes that “[t]he opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.” *Id.* at 268-69. Placing the burden of proof on SNAP recipients in overpayment cases fails to account for disparate capacities and circumstances, and fails to recognize the huge power imbalance between the Department and SNAP recipients. As discussed *infra*, this is particularly true of recipients who are not represented by attorneys, often have limited educational backgrounds, are frequently dealing with physical and/or mental disabilities, face implicit racial or cultural bias in program administration, and have minimal or no experience in unwinding the web of governmental agency policies and procedures. Couple the recipients’ own limitations with the inaccessibility of Department employees to try to resolve problems, it inevitably undermines the truth-seeking process, and is grossly unfair, to place the burden of proof on recipients.

The Department, on the other hand, is well-versed in its governmental rules and regulations applicable to the various assistance programs. It has resources available to assist in proving its case and can request extensions of time, gather necessary documents, or subpoena important witnesses. Recognizing the power imbalance, the Department must bear the obligation to prove, by a preponderance of the evidence, that its adverse decision was correct.

It is particularly egregious to place the burden of proof on people who have been receiving benefits. Especially because all hearings are *de novo*, if the Department takes adverse action based on some sort of alleged change within the household, the Department must have the obligation of demonstrating the *prima facie* case that justifies its asserted request to terminate, suspend, or reduce prior benefits, before the client has to come forward with evidence to rebut the *prima facie* case. In this context, a *de novo* appeal must be a non-deferential review of the Department's decision. *De novo* review consistent with *Goldberg* must first determine the validity of the Department's grounds for its action. Conversely, placing the burden of proof on the client is a contradiction of *de novo* review because it accepts the Department's change and asks the client to disprove it.

Further, given the means-tested nature of SNAP and stringent eligibility rules, SNAP households are by definition low-income. Any action that results in a reduction in benefits (such as recoupment after an overpayment), termination from the program, or seizure of state or federal payments – such as Social Security payments or tax returns – against debts supposedly owed to the state, can have catastrophic consequences for SNAP recipients already struggling to get by. Further, as discussed *infra* the vigor with which overpayment debts are pursued against vulnerable SNAP recipients, the lack of representation in SNAP appeals, and the implicit racial bias that permeates all aspects of benefits administration, all converge to subject SNAP recipients to a high risk of

erroneous deprivation of benefits and precious household resources, warranting placement of the burden of proof on the Department.

1. In Illinois, all types of overpayments are pursued aggressively, even where no fault or wrongdoing is alleged, threatening the economic stability of low-income recipients.

Generally, to be income eligible for SNAP in Illinois, households without a “qualifying member” (someone who is age 60 or older or living with a disability under Social Security Administration guidelines), must have gross income at or below 165 percent of the federal poverty level,² while households with at least one qualifying member must have gross income under 200 percent of that level.³ 89 Ill. Admin. Code § 121.61(a)(1). In 2018, the Food and Nutrition Service (“FNS”), a sub-agency of the U.S. Department of Agriculture (“USDA”) that administers SNAP, estimated that SNAP households in Illinois had an average of only \$786.00 of gross monthly income – well below the national average of \$852.00 of gross monthly income for SNAP recipients. USDA, FNS, *SNAP Household State Averages for SNAP Benefits (FY 2018)* (last visited May 20, 2022), <https://www.fns.usda.gov/SNAP-household-state-averages> (choose Illinois and click “gross income dollars/month”). With such low income, SNAP recipients often struggle to keep up with rising housing costs, save money for emergencies, or even afford enough food, putting SNAP households at risk when faced with allegations of overpayments and making them extremely vulnerable to the Department’s collection actions, even in instances where the Department itself is responsible for creating the overpayment.

² \$37,999.50 for a household of 3 based on the U.S. Department of Health and Human Services (DHHS) poverty guidelines for 2022. U.S. Department of Health and Human Services, *Poverty Guidelines* (2022), <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

³ \$46,060.00 for a household of 3 based on the DHHS poverty guidelines for 2022. DHHS, *Poverty Guidelines*, *supra*.

A SNAP overpayment occurs when a benefit recipient was issued benefits in an amount greater than they were eligible to receive. There are three categories of SNAP overpayments: 1) Intentional program violations (IPVs) resulting from an individual knowingly making false or misleading statements, or misrepresenting, concealing, or withholding facts. 89 Ill. Admin. Code § 121.50; 2) Inadvertent Household Errors (IHEs) caused by a misunderstanding or unintentional error on the part of the household, and; 3) Administrative errors (AEs) caused by the Department's action or failure to take action. Ill. Admin. Code § 165.30. According to the most recent State Activity Report released by USDA for FY 2020, less than 0.1 percent of newly established SNAP overpayment claim dollars were due to IPVs,⁴ with 82.3 percent attributed to IHEs, and 17.5 percent attributable to AEs. USDA, FNS, *Supplemental Nutrition Assistance Program State Activity Report Fiscal Year 2020* (Mar. 2022), <https://fns-prod.azureedge.us/sites/default/files/resource-files/FY20-state-activity-report.pdf>. Thus, in virtually all overpayment situations in Illinois, no intentional wrongdoing on the part of SNAP recipient is alleged. *Id.*

In Illinois, the Department pursues all claims regardless of the circumstances that led to the overpayment, the characteristics of the SNAP

⁴ Public benefits fraud is an extremely rare occurrence. For example, most of the small percentage of fraud that takes place in the SNAP program occurs on the retailer side, but still only amounts to a mere 1.5 percent of total SNAP benefits being trafficked. Randy Alison Aussenberg, *Errors and Fraud in the Supplemental Nutrition Assistance Program (SNAP)*, Cong. Res. Serv., at 2-5 (Sept. 2018) <https://fas.org/sgp/crs/misc/R45147.pdf>. By contrast, evidence of fraud on the SNAP recipient side is infinitesimally small. According to a recent State Activity Report published by USDA, for every 10,000 households participating in SNAP, about 14 contained a recipient who was investigated and determined to have committed fraud that resulted in an overpayment of benefits – only 0.14 percent. *Id.* To provide context, the IRS estimates that \$1 in every \$6 owed to the federal government is not paid, with the majority of tax evasion occurring at the higher income brackets. See William G. Gale & Aaron Krupkin, *How Big is the Problem of Tax Evasion*, Brookings Institute (April 2019), <https://www.brookings.edu/blog/up-front/2019/04/09/how-big-is-the-problem-of-tax-evasion/>.

household, or the amount of the claim, even though federal law does not require it to do so. In fact, the FNS gives states flexibility to waive some overpayments, especially where spending state administrative funds to pursue these debts would not be “cost effective.” 7 C.F.R. § 273.18(e) (2022). FNS has promulgated a cost effectiveness threshold that allows states to opt not to establish any overpayment claim amounting to \$125 or less. *Id.* Further, states can submit their own cost effectiveness plan that, if approved by FNS, could give states additional freedom to compromise or otherwise choose not to establish certain types of overpayments. *Id.* However, Illinois does not utilize this flexibility. According to a recent FNS Midwest Regional Office survey, Illinois was the only state out of six states in the Midwest region that neither had a policy to compromise overpayment claims, nor set a threshold under which claims would not be pursued.⁵ A state agency that has reserved for itself the power to collect any overpayment debts from low-income households in perpetuity, should, at a minimum, be expected to maintain and produce sufficient proof to show that the overpayment actually occurred, and have the burden of persuading an administrative hearing officer that its decision to establish an overpayment was correct.

Once the Department establishes an overpayment, the debt exists in perpetuity until resolved and the agency has a range of tools to collect. For households who still receive SNAP, the Department reduces their benefit amount by the greater of either 10 percent of the household's monthly benefit or \$10. *See* 89 Ill. Admin. Code § 165.84(b). As discussed above, recoupment of benefits for active SNAP households can severely impact recipients’ ability to meet their nutritional needs. For a family of three, a 10 percent reduction in benefits could

⁵ This information was supplied by FNS on March 15, 2018, in response to a Freedom of Information Act request submitted by the Shriver Center on Poverty Law on February 8, 2018. Document can be produced upon request.

amount to a loss of as much as \$66.00 a month in SNAP benefits. *See* IDHS, *Supplemental Nutrition Assistance Program Maximum Monthly Income Allowable* (Oct. 2021), <https://www.dhs.state.il.us/page.aspx?item=33412>. Even recoupment of \$10 a month can be felt by families who already need \$10-\$20 additional benefits a week per household member before achieving an adequate diet. Gundersen *et al.*, *supra*, at 121-124.

For households that no longer receive SNAP, the Department may use a range of tools to collect money from former recipients including: initiation of wage garnishment proceedings, referral of the debt to a private collection agency, referral to the Comptroller of the State of Illinois for collection under Section 10.05 of the State Comptroller Act (15 ILCS 405/10.5), referral to the Illinois Department of Revenue Debt Collection Bureau for collection in accordance with Section 10 of the Illinois State Collection Act of 1986 (30 ILCS 210/10), or referral of the overpayment debt to the federal Treasury Offset Program (TOP) for deduction of the debt from tax refunds and/or other federal warrants, such as Social Security benefits, in accordance with federal regulations. *See* 89 Ill. Admin. Code § 165.104.

TOP is a centralized offset program, administered by the Bureau of the Fiscal Service's Debt Management Services (DMS), to collect delinquent debts owed to federal agencies and state agencies acting as an agent of the federal government. In FY 2020, TOP was the most utilized collection method for SNAP claims in Illinois with over half (51.6 percent) of the dollars collected against overpayment debts seized through the program. USDA, FNS, *Supplemental Nutrition Assistance Program State Activity Report*, *supra* at 31. Through TOP, SNAP overpayment debts are offset by seizing federal payments, such as 100 percent of federal tax refunds – including refundable credits such as the Earned Income Tax Credit (EITC), 15 percent of disposable salary for federal employees, or 15 percent of Social Security and Railroad Retirement benefits. *See* Bureau of

Fiscal Service, U.S. Department of the Treasury, *Fact Sheet, Treasury Offset Program, Summary of Program Rules and Requirements* (last visited May 20, 2022), <https://fiscal.treasury.gov/files/top/TOP-rules-reqs-fact-sheet.pdf>.

Widespread utilization of TOP for collection of SNAP overpayment debts can be devastating for low-income households, particularly for older adults who rely heavily on Social Security retirement benefits. Social Security benefits are modest. In January of 2022, the average Social Security benefits level was about \$1,614 per month, or about \$19,370 per year – amounting to only 142 percent of the federal poverty level. Social Security Administration, *Benefits Paid by Type of Beneficiary, Beneficiary Data* (last visited May 20, 2022), <https://www.ssa.gov/cgi-bin/currentpay.cgi>. However, older adults who currently or formerly used SNAP are likely to have lower career earnings, and thus receive even lower benefits through Social Security. Michael Clingman *et al.*, *Replacement Rates for Hypothetical Retired Workers* (Aug. 2021), <https://www.ssa.gov/OACT/NOTES/ran9/an2021-9.pdf>. Despite these meager benefits, Social Security still provides the majority of income for most older adults. For about half of this group, it provides at least 50 percent of their income, and for about 1 in 4 older adults, it provides at least 90 percent of their income. Center on Budget and Policy Priorities, *Policy Basics: Top 10 Facts About Social Security* at #7-8 (Mar. 2022), <https://www.cbpp.org/research/social-security/top-ten-facts-about-social-security>. Offsetting 15 percent of these critical benefits has devastating consequences for older adults, particularly Black and Latino/a/x older adults, who are 2.5 times more likely to live in poverty when compared to white older adults, and will only add to the estimated 5.2 million older adults who struggle with food insecurity *Id.* See also Feeding America, *Senior Food Insecurity Studies* (May 2022), <https://www.feedingamerica.org/research/senior-hunger-research/senior>.

Just as the seizure of Social Security benefits can be devastating to older adults, the use of TOP to offset up to 100 percent of federal tax refunds and refundable credits like the EITC, can be disastrous for low-income workers and working families. According to the IRS, 25 million workers and families received an EITC for tax year 2020, with the average credit amounting to \$2,411. IRS, *EITC Reports and Statistics* (last visited May 20, 2022), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-reports-and-statistics>. These payments are a critical component of low-income household budgets, and research indicates that money received through the EITC is often spent on necessities such as paying bills, housing, and vehicle purchases and maintenance. See Andrew Goodman-Bacon & Leslie McGranahan, *How Do EITC Recipients Spend Their Refunds?*, 32 *Econ. Persps.* No. 2 at 19 (May 2008), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1134060. See also Center on Budget & Policy Priorities, *Policy Basics: The Earned Income Tax Credit* (Dec. 2019), <https://www.cbpp.org/research/federal-tax/the-earned-income-tax-credit>. Without these resources, many of the roughly 5.6 million people lifted out of poverty each year by the EITC would face severe hardship. *Id.*

Finally, debts referred to TOP can lie delinquent for years, even decades, until an eligible federal payment is available to be seized. This means that former recipients who begin collecting Social Security can be surprised by old SNAP overpayment debts long after losing any memory or records related to the circumstances causing the alleged overpayment, leaving them unable to understand, much less challenge, the validity of the seizure. See Virginia Eubanks, *Zombie Debts Are Hounding Struggling Americans. Will You Be Next?*, *The Guardian*, Oct. 15, 2019, <https://www.theguardian.com/law/2019/oct/15/zombie-debt-benefits-overpayment-poverty>.

2. SNAP appellants are often unrepresented, disadvantaging them in formal administrative hearings

Many SNAP recipients who file an appeal are unrepresented at the hearing. A study by the Legal Services Corporation (LSC) reports that low-income people did not receive any or enough legal help for 92 percent of the civil legal issues that impacted their lives in the past year. Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* (Apr. 2022), <https://www.lsc.gov/events/justice-gap-2022-report-release-unmet-civil-legal-needs-low-income-americans>. While there is limited data showing the rates of legal representation in SNAP administrative hearings specifically, one study from Washington State shows that a mere 16 percent of appellants had representation in benefits-related administrative hearings. Lisa Brodoff, *Lifting Burdens: Proof, Social Justice, and Public Assistance Administrative Hearings*, 30 J. Nat'l Assoc. Admin. L. Judiciary 601, 605 (2010), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1018&context=faculty>. Another study released just this year by the Colorado Center on Law and Poverty found that a staggering 95 percent of SNAP hearings in Colorado involved unrepresented SNAP recipients. Lyz Riley Sanders *et al.*, Colorado Center on Law and Policy, *Barriers, Errors, and Due Process Denied: A Review of Colorado's Supplemental Nutrition Assistance Program Administrative Hearing Process* at 16 (Mar. 2022), <https://cclponline.org/wp-content/uploads/2022/03/SNAP-Administrative-Hearing-Report-final.pdf>. SNAP administrative hearings are formal legal proceedings that occur on the record, are often adjudicated by a lawyer, and can involve the submission of evidence, examination and cross-examination of witnesses, and the offering of an opening and closing statement. As such, these legal proceedings can be difficult to navigate for beneficiaries who are unrepresented. Further, the complex legal framework of federal and state statutes, regulations, and sub-regulatory guidance and policies that govern

administration of the SNAP program and administrative hearing processes are challenging to unwind without the assistance of trained legal representation. Research that attempts to measure the success of low-income clients without legal representation tends to show that represented litigants fare better than those without representation. For example, in the eviction court context, two main studies show a substantially greater percentage of tenants without legal representation had judgments issued against them, compared to tenants represented by a lawyer. See Carrol Sheron *et al.*, *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 L. & Soc’y Rev. 419, 419-343 (2001) https://www.jstor.org/stable/3185408?seq=1-page_scan_tab_contents (study found that 51 percent of unrepresented tenants had judgments issued against them compared to 22 percent of represented tenants); see also D. James Greiner *et al.*, *The Limits of Unbundled Legal Assistance: A Randomized Study in Massachusetts District Court and Prospects for the Future*, 126 Harvard Law Review 901, 927 (2013), https://harvardlawreview.org/wp-content/uploads/pdfs/vol126_greiner_wolos_pattanayak_hennessy.pdf (study found that 75 percent of unrepresented tenants had judgments issued against them compared to 17 percent of represented tenants).

By contrast, the Department’s position is represented by Local Office Appeals Coordinators. Appeals Coordinators are “repeat players” in administrative hearings with vastly greater knowledge of the SNAP program rules, DHS policy manual provisions, and Worker’s Action Guide provisions than SNAP recipients, and more experience providing testimony, questioning witnesses, and crafting arguments before a hearing officer. This advantage is another reason why it is appropriate for the Department to have the burden of proof in administrative hearings concerning SNAP overpayments.

3. Bias permeates all aspects of public benefits administration, particularly prejudicing recipients of color

When assessing the risk of erroneous deprivation of benefits and resources to current and former recipients, it is impossible to ignore the racial bias that affects every level of benefits administration, including administrative appeals and collection of claims. Myths about public benefits fraud, waste, and abuse are frequently targeted toward communities of color. As activist Johnnie Tillmon poignantly observed in 1972, “we’ve been trained to believe that the only reason people are on welfare is because there's something wrong with their character” and this “character” attack is the result of decades of messaging built upon historical stereotypes about Black people – Black women in particular – dating back to slavery. Johnnie Tillmon, *Welfare is a Women’s Issue*, Ms. (originally published Spring 1972, republished From the Vault, March 25, 2021) <https://msmagazine.com/2021/03/25/welfare-is-a-womens-issue-ms-magazine-spring-1972/>. See also Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J. L. & Soc. Just., 233 (2014), <https://www.law.cuny.edu/wp-content/uploads/page-assets/faculty/pedagogy/ACammett-SSRN-id2457225-Deadbeat-Dads-Welfare-Queen.pdf> (describing the origins of the racist “welfare queen” stereotype and the impacts on both cultural attitudes and policy related to public benefits). Historical stereotypes of Black people as “lazy,” as well as grossly exaggerated accounts of “free-riding” were weaponized to further engrain racialized skepticism of welfare and public benefits. *Id.* These false messages proved extremely potent. By the 1990s, survey data analyzed by political scientist Martin Gilens showed the majority of white Americans believed that Black people could be “just as well off as whites if they only tried harder.” Martin Gilens, *Racial Attitudes and Opposition to Welfare* 57 J. Pol. 994, 994-1014 (1995), <https://www.journals.uchicago.edu/doi/10.2307/2960399>; see also Martin Gilens, *Why Americans*

Hate Welfare (1999). These attitudes were prominent in 1996 during the passage of the Personal Responsibility and Work Opportunity Reconciliation Act, which eviscerated federal cash assistance by transforming it from an entitlement to a block grant and added barriers – such as more stringent work requirements – to the SNAP program. See Elisa Minoff, Ctr. for the Study of L. & Soc. Policy, *The Racist Roots of Work Requirements* (Feb. 2020), at 23, <https://cssp.org/wp-content/uploads/2020/02/Racist-Roots-of-Work-Requirements-CSSP-1.pdf>; see also Nolan Downey, Shriver Center on Poverty Law, *Guaranteed Income: States Lead the Way in Reimagining the Social Safety Net* (Apr. 2022), at 27-31, <https://www.povertylaw.org/wp-content/uploads/2022/04/ESP-Shriver-Center-Report-V7-040122-1.pdf> (describing the racist origins of public benefits policies including work requirements, prior justice involvement, asset limits, drug-testing, and family caps). These changes ripped support away from many Black people who continue to be disproportionately low-income – not for the reasons pronounced by racist myths - but because of a history of systematic oppression and discrimination. *Id.*

The prevalence of these damaging racist sentiments means they could be internalized by public benefits caseworkers and manifest as subconscious or implicit racial bias. For example, many studies have shown that perceived differences between racial groups based on racial stereotypes influence the use of caseworker discretion to sanction recipients of the Temporary Aid for Needy Families (“TANF”) program. Inst. For Research on Poverty, Univ. of Wis.-Madison, *Understanding the Role of Caseworker Bias in Racial and Ethnic Inequities in Human Services* at 2 (2021), <https://www.irp.wisc.edu/wp/wp-content/uploads/2021/09/Memo-2-Caseworker-Bias-09272021pdf.pdf> citing Christopher Ojeda *et al.*, *Federalism and the Racialization of Welfare Policy*. 19 *St. Pol. & Pol’y Q.* 474, 474–501 (2019), <https://www.cambridge.org/core/journals/state-politics-and-policy-quarterly/article/abs/federalism-and-the->

[racialization-of-welfare-policy/5861D4C24B386A4BA7BE9DF1DDE72AB9](https://doi.org/10.1177/000312240907400304);
Sanford F. Schram *et al.*, *Deciding to Discipline: Race, Choice, and Punishment at the Frontlines of Welfare Reform*, 74 *Am. Soc. Rev.* 398, 398–422 (2009), <https://doi.org/10.1177/000312240907400304>; Jeffery M. Timberlake & Sarah Beth Estes, *Do Racial and Ethnic Stereotypes Depend on the Sex of Target Group Members? Evidence from a Survey-Based Experiment*, 48 *The Soc. Q.* 399, 399–433 (2007), <http://www.jstor.org/stable/40220031>). In fact, race plays a significant role in how TANF sanctions are implemented; studies consistently find that Black and Latina/x women are more likely to receive TANF sanctions compared to white recipients. *Id.* at 2. These patterns hold even after controlling for various factors including work history and children’s ages. *Id.* citing Marla McDaniel *et al.*, DHHS, *Identifying Racial and Ethnic Disparities in Human Services: A Conceptual Framework and Literature Review* (Nov. 2017), <https://www.acf.hhs.gov/opre/report/identifying-racial-and-ethnic-disparities-human-services-conceptual-framework-and>.

Implicit bias and internalized racial stereotypes can also play a role in the outcomes of administrative hearings. The Social Security Administration indicates that those most often improperly denied are claimants who are Black, women, and non-English speaking. In 1992, Congress requested an investigation of the apparent disparity in Black claimants’ denials. The investigation found that Black claimants obtained favorable outcomes only 55 percent of the time as compared to white claimants who obtained a favorable outcome 66 percent of the time. U.S. Gen. Accounting Office, GAO/HRD-92-56, *Social Security: Racial Difference in Disability Decisions Warrants Further Investigation* at 40 (1992) <https://www.gao.gov/assets/hrd-92-56.pdf>. This type of racial bias resulting from deeply entrenched stereotypes and myths about benefits recipients threatens the accuracy of overpayment determinations and hearing decisions, increasing the risk of erroneous deprivation of benefits for recipients of color.

Implicit bias also manifests from lack of cultural competence. Implicit biases are impacted by one's cultural preferences and expectations, influencing judgments and actions in the professional setting. "Culture is 'a dynamic value system of learned elements, with assumptions, conventions, beliefs and rules permitting members of a group to relate to each other and to the world, to communicate and to develop their creative potential.'" Hon. Gail S. Tusan & Sharon Obialo, *Cultural Competence in the Courtroom: A Judge's Insight*, Precedent (Fall 2010), at 39 (quoting Canadian Commission for UNESCO, *A Working Definition of "Culture,"* Cultures, at 78-83 (1977)), https://www.sog.unc.edu/sites/default/files/course_materials/04_OLAS_Cultural_Competence_in_the_Courtroom_A_Judge%27s_Insight.pdf. A society's dominant culture defines the value system of what is good, bad, just, or desirable. Jennifer K. Elek & Andrea L. Miller, *The Evolving Science of Implicit Bias: An Updated Resource for the State Court Community*, National Center for State Courts Report (Mar. 2021), at 9, <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/911/>. Developing culture competence involves four components: (1) awareness of one's own cultural worldview; (2) attitude towards cultural differences; (3) knowledge of different cultural practices and worldviews; and (4) cross-cultural communication. Tusan & Obialo, *Cultural Competence*, *supra*, at 39.

Research on discretionary decision-making has found that "when individuals make decisions under conditions of limited structure, ambiguous decision-making procedures, or subjective criteria, they are more likely to make decisions that manifest their biases." Elek & Miller, *Evolving Science*, *supra*, at 14. Assessment of credibility is an area of particular ambiguity in which implicit bias may impact the determination. One suggested antidote is "taking the time to assess whether or not our personal experiences, with crime, discrimination, vicarious trauma, or a perceived lack of proper respect from parties (either directly or through lack of preparation), are unduly coloring our perceptions is

crucial to avoiding implicit bias.” Judge Dana Leigh Marks, *Who, Me? Am I Guilty of Implicit Bias?*, 4 A. B. A. Judges’ J. 20, at 6 (2015), <https://www.naij-usa.org/images/uploads/newsroom/2015.11.01.00.pdf>. A decisionmaker must take the steps necessary to acknowledge and interrupt potential implicit bias including in situations where culture may be relevant in rendering a fair decision.

For example, in Ms. Chaudhary’s appeal, nothing in the record indicates that the Administrative Law Judge appropriately accounted for cultural differences in assessing Ms. Chaudhary’s credibility. Ms. Chaudhary lived in Pakistan for 34 years before coming to the United States in 2007 or 2008. (C586.) “Pakistan is a patriarchal society where men are the primary authority figures and women are subordinate.” Tazeen S. Ali *et al.*, *Gender roles and their influence on life prospects for women in urban Karachi, Pakistan: a qualitative study*, 4:7448 *Global Health Action*, (Nov. 2011), at 1, <https://pubmed.ncbi.nlm.nih.gov/22065609/>. Exposure to controlling behaviors is part of everyday life for women in Pakistan. *Id.* at 7. Ms. Chaudhary testified that one of the two men who lived in the basement apartments went through the mail for the building and gave Ms. Chaudhary her mail, and for that reason, she was unaware that her ex-husband had received mail at the same address. (C523, 577-580.) The Secretary deemed this arrangement incredible. (C673.) Nothing in the record indicates that the ALJ asked questions to determine whether Ms. Chaudhary’s culture played a role in her actions - accepting the arrangement with mail - that the ALJ deemed incredible.

For both active SNAP recipients, and for former SNAP recipients, recoupment of SNAP benefits or offsets of federal payments such as federal tax returns or Social Security benefits, can have devastating consequences for households already struggling to get by, thrusting them deeper into poverty. Given the incredibly high stakes for benefits recipients, the lack of representation in SNAP administrative hearings, and the numerous opportunities for the

injection of racial and cultural bias in benefits administration and adjudication of claims and appeals, extra care should be taken to ensure against erroneous deprivation of both critical nutritional benefits and cash that households rely on for other necessities.

C. The risk of erroneous deprivation of the Department’s ability to collect overpayments is comparatively low

Unlike the high risk of erroneous deprivation of benefits to SNAP recipients, the risk of erroneously depriving the Department of its ability to collect overpayment debts is comparatively low. First, low-income SNAP applicants must navigate a complex bureaucracy requiring them to provide information to verify their income, submit to an interview by Department staff, and verify their expenses. These administrative burdens are more likely to exclude eligible applicants than they are to grant benefits to a household that is properly ineligible. Second, the Department has numerous data tools available to verify continued eligibility for active recipients from validated third-party sources such as the Illinois Department of Employment Security (IDES), Social Security Administration, Veteran’s Administration, and U.S. Department of Labor. Lastly, even if the Department is erroneously deprived of its ability to collect the occasional overpayment, such deprivation poses almost no harm to the Department, the state, or the federal government.

1. SNAP recipients must navigate heavy administrative burdens to be certified as eligible, reducing the risk of overpayment

Eligible SNAP households must navigate an array of administrative burdens to obtain and maintain benefits. These burdens include lengthy applications, documentation requirements, in-person or telephone interviews, and the need to periodically recertify or reapply to maintain benefits. These processes protect the state from issuing benefits to households that are not eligible, but they are often over-protective, resulting in the denial or termination

of benefits for procedural reasons, even to households that are properly eligible. USDA monitors these state actions by measuring states’ “case and procedural error rates” (CAPERs), which show whether the state properly denied, suspended, or terminated SNAP benefits to certain households and properly notified those households of its decision. See Dottie Rosenbaum, *SNAP Error Rates at All-Time Lows* (Jul. 2014), https://www.cbpp.org/research/snap-error-rates-at-all-time-lows#_ftnref11. CAPERs data does not appear to be publicly available through USDA. However, according to CAPERs data published by the North Carolina Department of Health and Human Services, of the 53 states and territories reporting CAPERs in FY 2020, Illinois ranked near the bottom at 49th with 58.06 percent of its SNAP denials, suspensions or terminations being deemed improper. N.C. Dep’t of Health and Human Servs., *Reported Cases and Procedural Error Rates* (Apr. 2020), <https://www.ncdhhs.gov/media/9479/download>. If this data is accurate, it tends to show that Illinois more often denies benefits to people who need them, rather than grants benefits to people who aren’t eligible – greatly reducing the likelihood of an overpayment.

Active SNAP recipients also frequently lose benefits for procedural reasons. For example, a Michigan study found that half of SNAP recipients lost their benefits during recertification, even though most were still eligible. Colin Gray, *Why Leave Benefits on the Table? Evidence from SNAP* at 13 (May 2018), https://research.upjohn.org/cgi/viewcontent.cgi?article=1306&context=up_workingpapers. This phenomenon is called “churn” – unnecessary or unproductive cycling of families and individuals off and back on benefit coverage. This interruption in benefits is purely procedural, and due to the administrative burden of maintaining eligibility as opposed to changes in a household’s eligibility for benefits. In FY 2011, USDA studied SNAP churn rates – the percentage of cases that experience “churn” – in six different states: Florida, Idaho, Illinois, Maryland, Texas, and Virginia. USDA, *Understanding the Rates*,

Causes, and Costs of Churning in the Supplemental Nutrition Assistance Program (SNAP) at 38 (Sept. 2014), <https://www.urban.org/sites/default/files/publication/33566/413257-Understanding-the-Rates-Causes-and-Costs-of-Churning-in-the-Supplemental-Nutrition-Assistance-Program-SNAP-.PDF>. Of the states studied, Illinois had the highest rate of SNAP churn with an estimated 28 percent of SNAP cases experiencing an interruption of benefits for purely procedural reasons. *Id.*

The heavy administrative burden of obtaining and maintaining SNAP benefits for low-income individuals greatly reduce the risk that households will be overpaid benefits to which they are not properly entitled, especially at the point of initial application where income eligibility is painstakingly verified. Instead, these burdens more often function to deny benefits to households that are eligible.

2. The Department has multiple data tools available to prevent overpayments

One potential cause of overpayments for active SNAP recipients is failure to immediately report new income – such as that from a new job. Generally, when people in Illinois begin a new job, a new hire report form is completed by an employer and submitted to IDES within 20 days of each new hire. 820 ILCS 405/1801.1(b). That information is then stored in the State’s New Hire Registry. *Id.* According to the IDHS Worker’s Action Guide, every week, a listing of matches to the State New Hire Registry is provided to the Department. Ill. Dep’t of Human Servs., Worker’s Action Guide, § 22-14-02, New Hire Matches (2022) available at <https://www.dhs.state.il.us/page.aspx?item=18808>. For active clients appearing on the lists, a notice is generated telling clients to contact their caseworker to report their new job. *Id.* Additionally, local offices are also required to take certain actions when there is a data match. If the information received via the New Hire Registry has not been reported by the client, the local office staff

must set a control for 10 days from the mail date of the generated notice. If the information is not reported by the client within 10 days of the mailing of the notice, the local office must cancel the case, and then generate a notice of adverse action explaining that the case was cancelled for failure to report earned income. *Id.* This is just one mechanism that, if used properly, is available to the Department to avoid common overpayment situations. However, the New Hire Registry is just one of a series of reports that local offices frequently receive.

According to the IDHS Worker's Action Guide, local offices also receive National Quarterly earnings data every February, May, August, and November. *Id.* These reports alert local offices to the quarterly earnings associated with each Social Security Number on an active case. *Id.* Department policy directs staff to reference the reports and take action as required by each match. *Id.* Those actions could include: 1) verifying the wage earner is a SNAP unit member rather than someone else; 2) contacting the recipient requesting verification of the employment; and 3) if an overpayment is found, use the income verification provided by the customer, or the income listed in the national quarterly wage listing, to calculate the overpayment. *Id.*

Another mechanism used by the local offices is the Priority Action List (PAL). The PAL is generated monthly and identifies cases that have an error, have a high probability of error, or are due for a redetermination. Ill. Dep't of Human Servs., Policy Manual, § 19-06-00, Priority Action List (2022) available at <https://www.dhs.state.il.us/page.aspx?item=17510>. One function of the PAL is to identify a person who received earnings as shown by IDES data matches, thus prompting caseworkers to 1) verify the IDES wage earner is a SNAP recipient rather than someone else; 2) if wage earnings identified on the PAL were not budgeted correctly, determine whether it was a budgeting error by the local office; and 3) review SNAP eligibility. *Id.*

The Department already has at its disposal many mechanisms to properly monitor, identify, or in some cases even prevent overpayments. Given these tools, if the Department properly identifies an overpayment it should have no issue producing the documentation relied upon and satisfying the burden of persuading a hearing officer that an overpayment occurred.

3. Even if an erroneous hearing decision deprives the Department of the ability to collect an overpayment, the consequences to the Department are minimal

Erroneous deprivation of SNAP benefits can derail a low-income recipient's life, threaten their health, and thrust them deeper into poverty. By contrast, erroneously depriving the Department of the ability to collect a SNAP overpayment would do comparatively little harm to the Department, the state, or the federal government.

SNAP benefits are funded entirely with federal dollars, while states split the cost of administering the program with the federal government. *See* USDA, FNS, *Exploring the Causes of State Variation in SNAP Administrative Costs* at 2 (Jun. 2019), <https://fns-prod.azureedge.us/sites/default/files/media/file/SNAP-State-Variation-Admin-Costs-FullReport.pdf>. Thus, when an overpayment occurs, a SNAP recipient is receiving federal dollars to which they are not properly entitled. When the state collects these dollars, federal regulations set forth retention rates, allowing states to keep a portion of the money recovered depending on the type of overpayment that occurred. The state retention rate for IPV's is 35 percent; the rate for IHE's is 20 percent, and; the rate for AE's is 0 percent. 7 C.F.R. § 273.18(k) (2022).

The USDA State Activities report for FY 2020 shows that Illinois issued over \$3.3 billion in SNAP benefits that fiscal year, and the share of Illinois' administrative costs for the SNAP program amounted to \$120,325,983, about \$23 per case per month. USDA, FNS, *SNAP State Activity Report, supra*. Based

on the retention rates set forth in federal regulations, the amount of overpayment debt collected in FY 2020, and the types of overpayments these debts were collected against, the total amount of money retained by the state amounts to only 4.3 percent⁶ of the state's total share of administering the SNAP program in FY2020 with no telling how much of those costs were dedicated to attempting to collect overpayments in the first place.

When the Department makes a determination that a SNAP overpayment occurred, the Department should be able to produce the evidence it relied upon in making that determination, and that evidence should be sufficient to meet the burden of proof in a fair hearing. The worst possible harm to the Department and the State of placing the burden on the Department is that where there is insufficient evidence to prove that an overpayment occurred, the Department will not prevail in the hearing and thus not be able to collect some of the mere 4.3 percent in the State's share of administrative cost that it derives from collections on SNAP overpayments. Because SNAP benefits are entirely federally funded, the brunt of any financial harm would be borne by the federal government, which already has made a policy decision to give states discretion to waive or compromise certain overpayment claims, especially where states deem that collection of the claims would not be cost-effective. However, as discussed above, Illinois chooses not to utilize this discretion, instead opting to vigorously pursue even small dollar claims at great expense to low-income Illinoisans. Balancing this risk of miniscule financial harm to the Department, state, and federal government against the crushing loss of vital resources to low-income recipients

⁶ In FY 2020 Illinois collected \$1,996,743 against IPV's, \$22,514,256 against IHE's, and \$2,579,329 against AE's. USDA, FNS, *SNAP State Activity Report*, *supra* at 30. Based on the retention rates set forth in federal regulations, the state would have retained \$698,860 in IPV collections, \$4,502,851 in IHE collections, and \$0 in agency error collections, for a total of \$5,201,711, amounting to a mere 4.3 percent of Illinois' share of administrative costs totaling \$120,325,983 for FY 2020. *Id.*

and former recipients of SNAP strongly supports placing the burden of proof on the Department in SNAP overpayment hearings.

CONCLUSION

For the reasons outlined above, *amici* respectfully request this Court affirm the decision of the Appellate Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 29 pages.

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