

The Journey to Replacement of Stolen Food & Cash Benefits

Prevent Electronic Benefits Theft
Act of 2023

JUSTICE FOR BREAKFAST

MAY 4, 2023 | 9AM

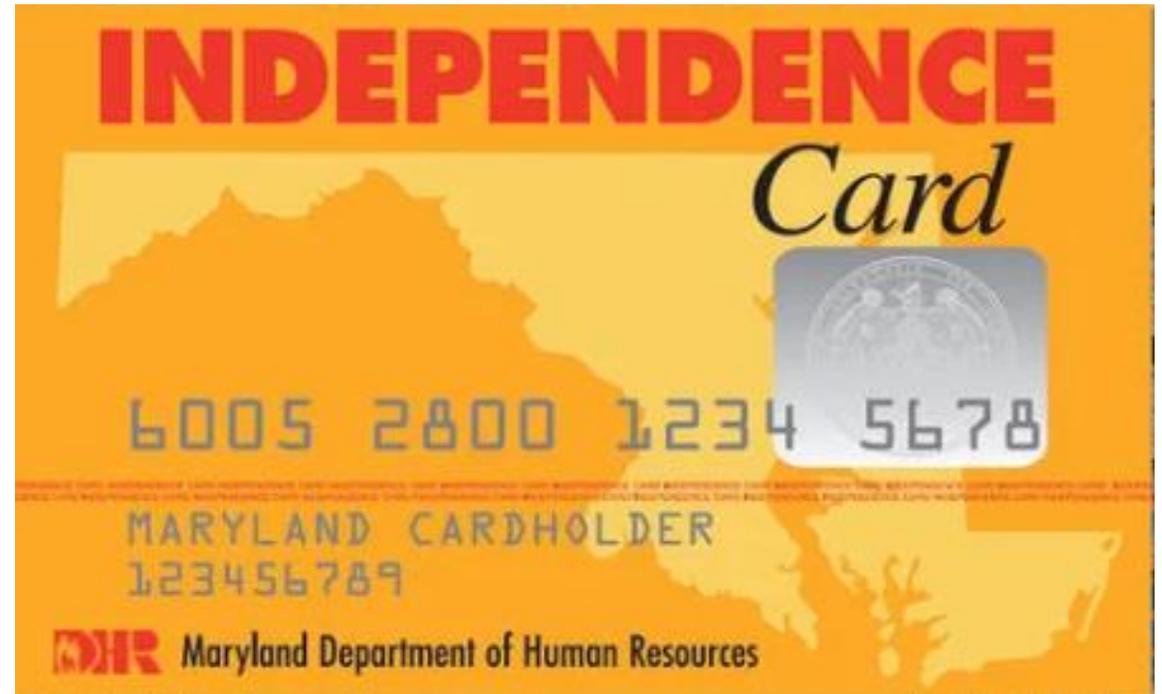


Tierra and Bridget share their experiences with theft of benefits



Electronic Benefits Transfer (EBT) Card

- Electronic system that allows benefits participants to pay retailers for their purchases, including food and other necessities
- EBT cards are in use in all 50 states and have been in use for SNAP since 2004
- Cash benefits can be withdrawn from an ATM



Nationwide Rise of EBT Card Skimming Theft

- Attaching devices to point-of-sale machines/PIN pads to steal card numbers and other information from credit, debit, and EBT cards
- Card skimmers look like a normal part of the machine /PIN pad.
- Easy to place and hard to spot
- Skimmed EBT card numbers and PINS are used to steal SNAP, TCA and TDAP benefits from recipients
- Victims often do not find out their funds have been stolen until trying to use their card.

Nationwide Rise of EBT Card Skimming Theft continued

Millions stolen from benefits recipients nationwide

- In Maryland, according to the Department's data:
 - 2022: Over 1.6 million dollars stolen from 2,334 households
 - 2021: Over \$92,000 stolen from 137 households

Theft has continued due to:

- Lack of security protections for EBT cards (chip technology)
- Inaction on state and federal level to make victims whole

EBT Card Theft & Security

- Skimming, Phishing, and Cybersecurity
- Lack of protections and card security
 - Chip vs. swipe
 - User notifications
 - Data encryption
 - Protected funds
- Updating Security
 - Cards and cardholders
 - Chips
 - Card-locking
 - EBT Systems
 - State Systems

Impact of Skimming Theft on Maryland's Households

- Low-income Marylanders living in poverty, including seniors and families with young children, who receive food (SNAP) and cash assistance (TCA, TDAP) on an EBT card.
- Prior to March 2023, the previous administration of the Department of Human Services was not replacing benefits to victims even though it could
 - “I truly believe that this belongs with law enforcement, and they will prosecute these fraudsters...I don't want to compensate the fraudsters for them stealing the money.” – Secretary Padilla testimony before Senate Finance Committee on 9/20/22
 - Secretary testified she had not asked Governor for additional funding to compensate victims.
- Harmful impact on households from unexpected loss of benefits:
 - Must divert remaining cash (if any) to cover rent, utilities, food, etc.
 - Late fees drive households deeper into poverty

Legal Argument for Replacement of Stolen Benefits

- SNAP and cash are entitlement programs
- Regulations require Department to issue “underissuance” or “underpayment” when one occurs
- Department’s decision not to replace benefits was arbitrary and capricious
- Department did not follow required rulemaking process in Administrative Procedures Act when it issued an internal memorandum on April 5, 2022, confirming that it would no longer replace cash benefits stolen from EBT card.

Department's Argument Against Replacement of Stolen Benefits

- Although federal and state law do not prohibit reimbursement of stolen benefits, they also do not require the Department to reimburse. Because there is no law, Department can set its own policy on this.
- No “underissuance” or “underpayment” occurred because the Department paid the correct benefit to the EBT card and it was therefore received (even if it was subsequently stolen by an unauthorized third party).
- Department did not act in an arbitrary or capricious manner. In implementing a policy to not replace stolen benefits, the Department did not violate any law because there is no law requiring reimbursement of stolen benefits.
- The Department's policy has a rational basis because Maryland cannot allocate funds to compensate victims of stolen benefits.

Community Outreach & Advocacy on the Legislation

Legislative advocacy workshops

Understanding and creating a list of “non-negotiables” with input from directly impacted community members

Prepping directly impacted community members to testify about their experience

Connecting directly impacted community members with media outlets to share their story

Utilizing organizational resources to support community members in navigating barriers to accessing the legislative process

Renee's Testimony at SB 2 / HB 502 Bill Hearing on 2/23/23



Mya's Testimony at SB 2 / HB 502 Bill Hearing on 2/23/23



What does SB 2 / HB 502 do?

Puts into statute a right to replacement of SNAP and cash benefits in amount lost due to theft within 10 days

Replacement benefits = amount lost due to theft (no cap)

No limit on number of months in which a household can receive replacement benefits after theft

Defines “theft” broadly to include: physical theft of EBT card, identify fraud and skimming

Prohibits requirement of filing police reports as a condition of receiving replacement benefits

If Department determines a theft did not occur, right to appeal and receive replacement benefits pending the appeal

Retroactive benefits stolen on/after January 1, 2021 (amended from declaration of COVID-19 pandemic on March 15, 2020)

Coordination between Department and EBT card vendor to reduce vulnerability of EBT cards to theft, including an embedded microchip on all EBT cards issued on/after

October 1, 2022

“By signing this legislation into law, we are taking deliberate action to help restore faith in some of our most-needed services and supports,” said Gov. Moore. “Maryland is again showing leadership in ensuring that some of our most vulnerable citizens will receive the help they need.”

“It's an egregious act to steal from someone who most needs help—we believe the way Maryland is responding will not just set the tone for this state, but for the country,” **said Maryland Department of Human Services Secretary Rafael López.** “Not only does this new state law expand stolen benefit reimbursement eligibility, it helps our department with the tools we need to strengthen EBT card security and decrease EBT fraud.”

- MD DEPARTMENT OF HUMAN SERVICES PRESS RELEASE
4/26/23

Federal Relief v. Maryland's Law

Federal

- Passed via omnibus legislation in 2022 (Rep. Ruppersberger)
- States must create plan for approval by USDA
- Covers theft between 10/1/2022-9/30/2024
- Reimburses up to two months
- Only reimburses SNAP
- Claims must be filed within 45 days of theft being noticed
- Maryland is first in nation for approved state plan

Maryland

- Passed via legislation in 2023 (Sen. Hester, Del. Lewis)
- Signed into law on April 24, 2023, funds available for reimbursement July 1, 2023
- Retroactive reimbursement period is from 1/1/2021-9/30/2022
- Reimburses in full both SNAP and cash
- No deadline on filing claims

Maryland as a Model

10 other states have had federal plans approved



Shared aspects

Timeline for reimbursement

Attestation

State validated information

Date of discovery vs. date of theft

Rights to fair hearing

Reimbursement Process: How's It Going for Clients?

- MD Hunger Solutions
 - Fielded 31 calls
 - Submitted 16 claims
 - All reimbursed claims received within 5 days
- For claims of stolen benefits on/after 10/1/22: Department approved over **6,800 claims** for replacement of stolen SNAP and cash benefits, totaling **\$4.3 million dollars** in reimbursement (as of beginning of April)
- For claims of stolen benefits between 1/1/21 to 9/30/22: Maryland will reimburse \$826,000 in stolen food and cash benefits from 1,095 and approved \$1.8 million in state general funds

Resources for Community Members Navigating Reimbursement

- ▶ Apply for reimbursement online or in person at a local DSS office
 - ▶ <https://dhs.maryland.gov/ebt-reimbursement/>
- ▶ For assistance completing a new claim form over the phone, please call one of the Department's SNAP Community Partner Organizations:
 1. Maryland Hunger Solutions for **Statewide** (English, Spanish). Call (866) 821-5552
 2. Community Outreach & Development for **Prince George's County** (English, Spanish). Call (301) 735-0121
 3. Community Engagement & Consultation Group for the **Laurel, Ann Arundel, Howard** area (English, Spanish and Farsi). Call (301) 525-8807
 4. LifeStyles of Maryland for **Southern Maryland** (English, Spanish). Call (301) 609-9900
 5. CASA (offices in Silver Spring, Hyattsville and Baltimore City). To set up an appointment or for virtual support, call Multilingual Health Information:
 - Spanish/English – 301-270-8432 or 1-800-201-6567
 - French/English – 240-270-1318

To request **legal assistance** with a denial of claim for reimbursement, call HPRP at 410-685-6589

Prevent Electronic Benefits Theft Act of 2023 Bill Signing



DISCUSSION

- What surprised you or stuck with you?
- What questions do you have for the presenters?
- Do you have any recommendations on how to further the group's advocacy (working with other organizations, coalitions, outreach, etc.)?

Presenters' Contact Information

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