



State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

OFFICE OF THE STATE COMPTROLLER
P.O. BOX 024
TRENTON, NJ 08625-0024
(609) 984-2888

PHILIP JAMES DEGNAN
State Comptroller

September 29, 2016

Ford M. Scudder
State Treasurer
Department of the Treasury
50 West State Street
P. O. Box 002
Trenton, NJ 08625-0002

Elizabeth Connolly
Acting Commissioner
Department of Human Services
Capital Place One
222 South Warren Street
P.O. Box 700
Trenton, NJ 08625-0700

Aaron R. Fichtner, Ph.D.
Acting Commissioner
Department of Labor and Workforce Development
John Fitch Plaza, 13th Floor
P.O. Box 110
Trenton, NJ 08625

**Re: Improper Benefit Payments to Incarcerated Individuals
Follow-Up Report F-18**

Dear Treasurer Scudder, Acting Commissioner Connolly and Acting Commissioner Fichtner:

On May 29, 2013, the Office of the State Comptroller (OSC) issued an Audit Division report titled *Improper Benefit Payments to Incarcerated Individuals* (Report PA-18). In that report, OSC made recommendations directed to the Department of the Treasury (Treasury), the Department of Human Services (DHS) and the Department of Labor and Workforce Development (LWD). Pursuant to *N.J.S.A. 52:15C-1 et seq.*, OSC has conducted a follow-up review to assess the implementation of those recommendations.

Background, Scope and Objective

Many federal and state benefit programs identify specific circumstances under which incarcerated individuals are ineligible to receive program benefits. In our 2013 audit report, OSC identified more than \$23 million in benefit payments from federal and state programs to individuals who were incarcerated and therefore not legally entitled to such payments. The scope of the initial review covered program participants for the 22-month period of July 1, 2009 through April 30, 2011. These payments generally resulted from a lack of adequate internal controls at the state agencies administering these programs.

The objective of our follow-up review was to determine if the state agencies have implemented the six recommendations contained in our initial audit report.

Summary Conclusion

The departments of the Treasury, Labor and Workforce Development and Human Services (hereinafter “the Departments”) are primarily responsible for oversight of the programs that were examined in our 2013 report. As our follow-up report reveals, the Departments have made significant progress in implementing the recommendations contained in the initial audit report. Specifically, five of the six audit recommendations have been implemented. As of December 2015, the corrective actions have resulted in estimated cost savings of \$19.2 million related to the denial of unemployment and Medicaid benefits to incarcerated individuals. Moreover, as of October 2015, Treasury officials have recovered approximately \$2.5 million improperly issued Medicaid and pension benefits to inmates.

Status of Initial Audit Recommendations

Recommendation 1

The Department of Labor and Workforce Development should use county incarceration data to identify inmates who are improperly receiving Unemployment Insurance benefits.

Status: Implemented

During the initial audit, OSC found that LWD matched identifying information of Unemployment Insurance benefit recipients with the Department of Corrections’ database of individuals in state custody. It had no mechanism to verify similar information regarding inmates in county facilities. Following our audit, LWD executed a Memorandum of Understanding (MOU) with the Administrative Office of the Courts (AOC) and the state Office of Information Technology (OIT).

Under the MOU, the AOC, which maintains and manages information concerning county jail inmate populations statewide, extracts data for county jail inmates on a weekly basis. LWD officials stated that, in May 2013, they began using the AOC information to cross-match county

inmates with Unemployment Insurance benefit recipients. OSC reviewed one month of cross-matches to confirm the process has been implemented and concluded that LWD is using county incarceration data to identify inmates who are improperly receiving Unemployment Insurance benefits. As of September 2015, LWD had identified 2,766 matches of county inmates and estimates a savings of \$3.3 million for denied unemployment benefits.

Recommendation 2

The Department of Labor and Workforce Development should, as deemed appropriate, continue to pursue recovery of the improper Unemployment Insurance payments as identified in this report.

Status: Implemented

During the initial audit, OSC identified improper Unemployment Insurance benefits paid to more than 7,600 incarcerated individuals.

During our follow-up review, LWD advised OSC that it had partnered with the Division of Criminal Justice (DCJ) to investigate the most egregious cases and pursue recovery. That effort is ongoing.

Recommendation 3

The Department of Human Services should work with the Administrative Office of the Courts to develop a cost-effective data-sharing protocol.

Status: Implemented

The Medicaid Program

During the initial audit, OSC reviewed payments made on behalf of incarcerated individuals for the Medical Assistance and Health Services Program (Medicaid) administered by the Division of Medical Assistance and Health Services (DMAHS) within DHS. The OSC's Medicaid Fraud Division (MFD) compared the databases of state and county inmates to the database of individuals for whom Medicaid claims were paid and identified more than \$7.1 million in payments to incarcerated individuals. Although DMAHS entered into an MOU with the DOC in January 2013 to obtain information about incarcerated individuals in state custody, it had no mechanism to obtain similar information regarding inmates in county facilities.

In December 2015, however, OSC received a copy of an MOU between DMAHS, AOC and OIT. The MOU states that AOC will extract data for county jail inmates and provide DMAHS with a monthly report. DMAHS uses this information to cross-match county inmates with Medicaid benefit data. As of December 2015, DMAHS had identified 5,400 county inmates who received medical services improperly billed to Medicaid. As a result of the implemented cross-matching processes, DMAHS estimated approximately \$16 million of cost avoidance in 2015 for denied

payments to ineligible inmates. In addition, MFD is investigating the \$7.1 million in improper payments for Medicaid services provided to ineligible inmates identified in the original report and, as of August 2015, has recovered approximately \$2.3 million of those payments. MFD continues to investigate and seek recovery, when appropriate, of improper benefits identified in our initial audit report.

Food and General Assistance Programs

The Division of Family Development (DFD), within DHS, administers the Supplemental Nutrition Assistance Program (SNAP) and the Work First New Jersey Program (WFNJ). WFNJ includes General Assistance and Temporary Assistance to Needy Families (TANF). During the initial audit, OSC identified \$4.2 million in payments for SNAP and \$1.2 million in payments for WFNJ issued to incarcerated individuals. At the time, OSC noted that DFD completed a cross-match of SNAP recipients to state incarceration data, but did not reconcile SNAP or WFNJ recipients to county inmate data.

During our follow-up, OSC was provided a copy of an agreement between DFD, AOC and OIT. The agreement states that AOC will provide county jail inmate data monthly to DFD. OSC was advised by DFD that it uses this data to identify county inmates receiving WFNJ or SNAP benefits and then take action to terminate those benefits during the period of incarceration. DFD officials began cross-matching AOC's list of county inmates with WFNJ and SNAP benefit recipients in October 2014. OSC reviewed a sample of cross-matched data to confirm that DFD has implemented a data-sharing system with AOC that identifies county inmates who are improperly receiving SNAP or WFNJ benefits.

Recommendation 4

The Department of Human Services should, as deemed appropriate, pursue recovery of the improper Supplemental Nutrition Assistance Program, General Assistance and Temporary Assistance to Needy Families benefit payments as identified in this report.

Status: Not Implemented

DHS failed to provide documentation to indicate that this recommendation has been implemented.

Recommendation 5

The Department of the Treasury should work with the Department of Corrections and the Administrative Office of the Courts to develop a cost-effective data-sharing protocol.

Status: Implemented

During the initial audit, OSC found that Treasury's Division of Pensions and Benefits (DPB) did not compare its database of public retirees against state or county incarceration data to identify

individuals who had been convicted of crimes disqualifying them from receiving pension benefits. The OSC audit determined that \$354,158 of pension payments had been improperly paid to state retirees who had been convicted of crimes rendering them ineligible to receive pension benefits during incarceration.

During our follow-up, DPB provided OSC with a copy of an agreement between itself and DOC, which states that DOC will provide state inmate data to DPB on a monthly basis. Additionally, OSC was provided an agreement between AOC, DPB and OIT, which states that the AOC will provide a monthly report of county inmates to DPB. DPB officials said they perform a monthly reconciliation of pension recipients with DOC and AOC incarcerated individual data. OSC reviewed a sample of cross-matches to confirm the procedure has been implemented and concluded that DPB is using state and county incarceration data to identify inmates who are improperly receiving pension benefits. Since the implementation of this process, as of October 1, 2015, DPB officials have recovered approximately \$225,000.

Recommendation 6

The Department of the Treasury should, as deemed appropriate, continue to pursue recovery of the improper pension payments as identified in this report.

Status: Implemented

During the initial audit, OSC determined that \$354,158 of improper pension benefits had been paid to state retirees while they were incarcerated.

As of September 30, 2015, DPB provided details showing that \$176,810 in improper pension payments have been recovered.

Reporting Requirements

We provided a draft copy of this report to the Departments for their review and comment. Of the three Departments, only DHS chose to comment. Their response was considered in preparing our final report and is attached as Appendix A. OSC does not believe the DHS/DFD response addresses the state statute or regulation prescribing the ineligibility of SNAP or WFNJ benefit payments to incarcerated individuals.

The Office of the State Comptroller is required by statute to monitor the implementation of our recommendations. To meet this requirement, the Departments shall report periodically to this Office advising what additional steps they have taken to address the unresolved issues in this report. This Office will continue to monitor those steps.

We thank the management and staff of the Departments for the courtesies and cooperation extended to our auditors during this review.

Sincerely,



Yvonne Tierney, CPA
Director, Audit Division

Attachment

- c. Michael Tyger, Acting Director of Administration, Department of the Treasury
- Florence J. Sheppard, Acting Director, Division of Pension and Benefits, Department of the Treasury
- Gerald P. Calamia, Director, Office of Internal Audit, Department of Labor and Workforce Development
- Natasha Johnson, Director, Division of Family Development, Department of Human Services
- Mark Talbot, Director, Office of Auditing, Department of Human Services
- Meghan Davey, Director, Division of Medical Assistance and Health Services, Department of Human Services
- Richard Hurd, Assistant Division Director, Division of Medical Assistance and Health Services, Department of Human Services
- Larry Braasch, Assistant Division Director, Division of Family Development, Department of Human Services
- Thomas Mattaliano, Assistant Division Director, Division of Family Development, Department of Human Services

Appendix A - Auditee Response



State of New Jersey
DEPARTMENT OF HUMAN SERVICES
PO Box 700
TRENTON NJ 08625-0700

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ELIZABETH CONNOLLY
Acting Commissioner

September 8, 2016

Mr. Philip J. Degnan, State Comptroller
Office of the State Comptroller
P.O. Box 024
20 West State Street, 12th Floor
Trenton, New Jersey 08625

Dear Mr. Degnan:

In a letter from Yvonne Tierney, Director, dated July 8, 2016 and a subsequent email from Daniel Rosenberg, Auditor-in-Charge, the Office of the State Comptroller (OSC) requested an update on Recommendation 4 as it relates to the recovery of improper SNAP, GA and TANF benefit payments outlined in the audit report entitled "Improper Benefits Payments to Incarcerated Individuals" (Report PA-18).

The Department of Human Services DHS' Division of Family Development (DFD) administers these programs through the state's 21 County Welfare Agencies and Boards of Social Services. Under the federal rules and regulations that govern SNAP, DFD has a number of mechanisms to recoup benefits.

Pursuant to 7 CFR 272.13, states are required to maintain a Prisoner Verification System; however, this rule did not take effect until the latter part of 2012. The Comptroller Report reviewed cases from July 2009 through April 2011. Since the implementation of the final rule, DHS/DFD has begun using the prisoner information received from the Social Security Administration and has entered into a data sharing agreement with the Administrative Office of the Courts. Monthly matches are conducted and positive matches are reported to the local agencies which are then required to notify the household of the match. No action can be taken to reduce or terminate benefits until the household has been afforded an opportunity to refute the match results.

In response to the initial report, DHS/DFD discussed the impact that Simplified Reporting would have on the recipient population. Simplified Reporting is a process that requires households to notify the agency when a change increases income beyond the allowable limit for the household size. All other changes are not required to be reported until the time of the Interim Report or next recertification. The simplified reporting process is federally guided by 7CFR 273.12(a)(s).

Mr. Philip J. Degnan
September 8, 2016
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The Comptroller Notes contained in Appendix B dismissed the potential impact of Simplified Reporting, and indicated that DHS/DFD did not sufficiently express this nuanced element of the program. While it is appropriate to say that individuals who are incarcerated are not eligible to receive SNAP benefits, it should not be assumed that benefits issued to someone who currently may be ineligible, rises to the level of being considered an over-issuance for which, under federal regulations, a claim may be established.

A SNAP claim is an over-issuance arising from an Intentional Program Violation, an Inadvertent Household Error, or an Agency Error. Under Simplified Reporting, a household is not required to immediately report when a member leaves (including for incarceration) so the agency cannot establish a claim for a program violation or an inadvertent error. Since 7 CFR 272.13 was not published until after the period in dispute, there was not an affirmative duty of the agency to conduct a match, therefore, a claim cannot be established on the basis of an agency error.

With the publication of 7 CFR 272.13, this loophole has been eliminated by FNS. Now, recipients are matched monthly and contacted by the agency. Once questioned by the agency, the household must report the changes. The DFD's, Office of Program Compliance monitors the local agencies to ensure that the prison matches are acted upon in a timely manner to prevent the issuance of benefits to incarcerated individuals.

In summary, this recommendation has been implemented. Thank you for the opportunity to share our progress in this regard.

Sincerely,



Elizabeth Connolly
Acting Commissioner

EC:14

c: Yvonne Tierney
Carrie L. Meyer
Daniel Rosenberg
Natasha Johnson