



**STATE OF NEW JERSEY
OFFICE OF THE STATE COMPTROLLER**

***IMPROPER BENEFIT PAYMENTS TO
INCARCERATED INDIVIDUALS***

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COMPTROLLER**

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PA-18

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BACKGROUND, AUDIT OBJECTIVE AND METHODOLOGY

Many federal and state benefit programs list specific circumstances under which incarcerated individuals cannot receive program benefits. The objective of our audit was to determine whether incarcerated individuals in New Jersey are receiving monetary benefits from these programs or other similar payments to which they are not legally entitled.

We specifically reviewed payments related to the following:

- New Jersey Medical Assistance and Health Services Program
- Supplemental Nutrition Assistance Program
- Work First New Jersey
- Unemployment Insurance Program
- Housing Choice Voucher Program
- State Rental Assistance Program
- Pension payments for retired public employees
- Payroll checks issued to State employees

To accomplish our audit objective, we collected data from the responsible State departments regarding program participants and State employees for the 22-month period of July 1, 2009 to April 30, 2011. We matched this data against State and county incarceration data using each individual's first name, last name and Social Security number.

In New Jersey, inmate incarceration data for those prisoners whose sentences are served at State prisons is maintained by the Department of Corrections (DOC). County inmate incarceration data is maintained by the Administrative Office of the Courts (AOC), except for inmates in Bergen County, which maintains its own inmate data. For purposes of this report, any reference to county incarceration data includes both AOC and Bergen County data.

For each data match, we compared the dates of program participation to the individual's incarceration commitment and release dates. Where those dates coincided, we presented the data to the department administering the program in an attempt to verify that the program payments were improper. In some instances those communications revealed that the responsible department already had identified the improper payment and was working to recoup it. Those payments were removed from our testing and are not included in the compilations set forth in this report. In other instances, the responsible department ultimately determined that the payment at issue was not improper, and those payments are not included in this report either. As of April 17, 2013 (the end of our audit field work), in some instances the responsible departments were still in the process of confirming that the identified payments were improper.

In making these determinations, we conducted interviews with staff at the departments administering these programs and reviewed applicable statutes and regulations. We also sought to determine if appropriate internal controls were in place at these departments to prevent inmates from inappropriately receiving these publicly funded program benefits.

As part of our audit, we used specialists from the Office of the State Comptroller's Medicaid Fraud Division (MFD). As part of its oversight role, MFD recovers improperly expended Medicaid funds.

This audit was performed pursuant to the State Comptroller's authority as set forth in *N.J.S.A. 52:15C-1 et seq.* We conducted our audit in accordance with generally accepted government auditing standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Concerning the Housing Choice Voucher Program and the State Rental Assistance Program, both of which are administered by the Department of Community Affairs (DCA), we identified relatively immaterial amounts of improper payments. While not reported on in detail herein, we referred those exceptions to DCA for its review and disposition.

Our analysis of payroll checks issued to State employees also revealed relatively immaterial amounts of improper payments. Our payroll analysis focused on payroll checks issued to State employees who used sick leave while incarcerated. State regulations do not permit use of sick leave during a term of incarceration. We specifically found that 13 incarcerated State employees had improperly used sick leave during a term of incarceration. We provided this information to each of the responsible State departments for their review and disposition, including recovery of the payroll funds as appropriate.

SUMMARY OF AUDIT RESULTS

Our audit identified more than \$23 million in benefit payments from a series of federal and State programs to individuals who were incarcerated and therefore do not appear to be entitled to such payments. Table 1 summarizes these payments, which were made during our 22-month test period of July 1, 2009 to April 30, 2011.

Table 1

Program	Amount of Benefit Payments Identified
Unemployment Insurance Program	\$10,641,563
New Jersey Medical Assistance and Health Services Program (Medicaid)	\$7,107,248
Supplemental Nutrition Assistance Program	\$4,252,169
Work First New Jersey	\$1,245,456
Pension payments to retired public employees	\$354,158
Total	\$23,600,594

These payments generally resulted from a lack of adequate internal controls at the State agencies administering these programs. Particularly notable in this regard was the fact that those agencies are not making use of county incarceration data to identify inmates who are improperly receiving this government assistance. In addition, some of the agencies are placing unwarranted reliance on highly informal control mechanisms, such as one agency reviewing New Jersey newspapers to determine if any of its thousands of program participants have been arrested or convicted of a crime. The implementation of adequate controls would limit or eliminate improper and unnecessary benefit payments, thereby saving taxpayer funds.

The following sections of this report set forth our specific findings relating to the programs we tested.

AUDIT FINDINGS AND RECOMMENDATIONS

The Unemployment Insurance Program

We reviewed payments made to incarcerated individuals in connection with the Unemployment Insurance Program. This program is administered by the Department of Labor and Workforce Development (LWD).

Unemployment Insurance provides temporary income benefits to eligible individuals who are “able to work, . . . available for work, and . . . actively seeking work,” but who are presently unemployed. *N.J.S.A.* 43:21-4(c)(1). Although the relevant legislation does not explicitly bar incarcerated individuals from receiving program payments, in order to receive benefits an applicant must certify to the above biweekly either through the internet or by telephone. By definition, an individual is not “available for work” if he or she is incarcerated.

LWD has controls in place to prevent inmates in State custody from receiving Unemployment Insurance payments. Specifically, in addition to the biweekly recertification process, LWD generates a weekly report utilizing each applicant’s name, address, date of birth and Social Security number and matches it against DOC’s incarceration database to determine if any individuals recertified for Unemployment Insurance benefits are currently incarcerated. However, no such verification is performed using county incarceration data.

When we compared Unemployment Insurance recipient data to State and county incarceration data, we identified \$10,641,563 in Unemployment Insurance benefit payments paid out to more than 7,600 incarcerated individuals. Many of these inmates received improper unemployment payments for an extended period of time. For example, one individual received unemployment payments for more than a year while incarcerated for a drug-related offense. He received payments totaling \$39,631 during his incarceration. Similarly, another individual, who was convicted of unlawful possession of a firearm, received \$25,704 in unemployment benefits over the course of one year while

incarcerated. He began receiving the payments only after he already had been incarcerated for three months.

Given that continued eligibility to receive Unemployment Insurance benefits requires a biweekly certification by the applicant, it is likely that benefits were secured fraudulently. We have referred this matter to our Division of Investigations for further review and appropriate action, including criminal referrals as appropriate.

In response to our findings, LWD has begun to recover the improper payments and is working to incorporate the use of county incarceration data into its verification process.

The Medicaid Program

The Department of Human Services' Division of Medical Assistance and Health Services (DMAHS) administers the New Jersey Medical Assistance and Health Services Program (Medicaid), which pays for medical services for low-income individuals and families.

Pursuant to *N.J.A.C. 10:72-3.9(b)*, "Any person who is incarcerated in a Federal, State, or local correction facility (prison, jail, detention center, reformatory, etc.) is not eligible for the Medicaid program." However, an individual "may continue to receive [Medicaid] services for the month in which he becomes an inmate." *N.J.S.A. 30:4D-6(e)(1)*. For example, an individual incarcerated on any day in November is ineligible for Medicaid payments for medical services provided on December 1 through the end of the term of incarceration. In lieu of participation in the Medicaid program, the correctional facilities themselves provide for medical care for inmates in their custody.

When MFD compared incarceration data to the database of individuals for whom Medicaid claims were submitted and paid, MFD identified in excess of \$7.1 million in apparently improper Medicaid payments during our audit period. Of this amount, \$5,349,427 was paid in the form of "capitation" payments on behalf of inmates enrolled in Medicaid. Capitation payments are fixed, monthly amounts paid per eligible individual to a Medicaid managed care organization responsible for the individual's health care. An additional \$1,757,821 was paid to individual health care providers, such as pharmacies, hospitals and health clinics. Some of these payments may have been the result of Medicaid being billed for services rendered to individuals fraudulently using someone else's Medicaid card.

During the course of our audit, in January 2013, DMAHS entered into a Memorandum of Understanding with DOC to obtain information on individuals who are incarcerated in State custody. However, DMAHS currently has no

mechanism in place to obtain such information regarding inmates in county facilities.

MFD is in the process of investigating the payments referenced in this report and will pursue recovery of improper payments as appropriate. As part of that process, MFD will also make any appropriate criminal referrals.

Food and General Assistance Programs

Our audit also included a review of payments made to incarcerated individuals as part of the Supplemental Nutrition Assistance Program and the Work First New Jersey program. Both of these benefit programs are administered by the Department of Human Services' Division of Family Development (DFD).

Supplemental Nutrition Assistance Program

The Supplemental Nutrition Assistance Program (SNAP) assists qualifying low-income individuals and families in purchasing groceries. SNAP allows program applicants to apply for benefits in a variety of ways including in person or through the internet. In addition, initial verification information (i.e., birth certificate, photo identification) must be submitted in person or by an authorized representative at a county welfare agency. Recertification of program eligibility is performed at periodic intervals of no less than 12 months.

N.J.A.C. 10:87-2.2(b) specifically states that “[i]ndividuals or groups of individuals who are residents of an institution . . . may not participate in the [SNAP] program.” Individuals are considered “residents of an institution” when “the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution’s normal services.” *N.J.A.C. 10:87-2.4(a)*. At the time of program certification and recertification, the applicable county welfare agency is required by State regulation to determine whether a SNAP applicant is eligible for the program, including, for example, whether the individual is a resident of an institution. According to the State administrator responsible for overseeing the program, this verification is completed through a match of SNAP recipients to State incarceration data. However, county inmate data is not being used in the matching process.

When we compared SNAP participant data to State and county incarceration data, we identified \$4,252,169 in SNAP benefit payments to incarcerated program participants.

Work First New Jersey

Work First New Jersey (WFNJ) provides temporary cash assistance and other support services to low-income families and individuals. WFNJ includes the General Assistance and the Temporary Assistance to Needy Families (TANF) programs. General Assistance provides cash benefits and support services to individuals and couples with no dependent children. TANF provides cash assistance and other support services to families and is designed to help recipients become self-sufficient through job training and similar activities. The verification and recertification process for these programs is similar to that of the SNAP program.

According to *N.J.S.A. 44:10-48(b)(5)*, “a person absent from the home who is incarcerated in a federal, State, county or local corrective facility or under the custody of correctional authorities” is not eligible for WFNJ assistance.

DFD does not use State or county incarceration data to identify inmates improperly receiving General Assistance or TANF benefits. A DFD official stated to us that because most General Assistance and TANF recipients also receive SNAP, no additional incarceration checks are necessary. However, as noted previously, SNAP recipients are not being screened using county incarceration data.

When we compared General Assistance participant data to State and county incarceration data, we identified \$395,712 in benefit payments to program participants identified as incarcerated. Similarly, when we compared TANF participant data to State and county incarceration data, we identified \$849,744 in benefit payments to program participants identified as incarcerated. These benefit payments under WFNJ thus totaled \$1,245,456.

Pension Payments

We also reviewed State pension payments made to incarcerated individuals.

The Department of the Treasury's Division of Pensions and Benefits (DPB) makes pension payments to public employees after their retirement based on years of creditable service to the State. State law mandates, however, that no State pension shall be paid to any person during a period when the individual is confined in a penal institution as a result of a conviction of a crime involving "moral turpitude." *N.J.S.A. 43:1-2*. Although "moral turpitude" is not specifically defined in the statute itself, courts have held that such crimes include, among other offenses, crimes involving a malicious intent, crimes involving an intent to deprive someone of property and any crime of which fraud is an element.

DPB does not match its database of public retirees against State or county incarceration data to identify individuals convicted of crimes that might require the forfeiture of their pension. Instead, the far more informal DPB process relies on receiving tips and reviewing New Jersey newspapers to identify pension recipients who have been sentenced to prison.

We compared the databases described above and submitted our results to DPB along with the individuals' incarceration dates and conviction information. DPB staff then researched each conviction and the resulting period of incarceration, and determined if the crime should have resulted in a forfeiture of benefits. DPB staff concluded that \$354,158 of pension benefits had been paid to State retirees while they were incarcerated for crimes involving moral turpitude, although final determinations in this regard must be made by the pension board itself. The disqualifying offenses in these cases included crimes such as robbery, official misconduct and kidnapping. DPB has begun the process to recover the improper payments.

CONCLUSIONS AND RECOMMENDATIONS

The improper payments set forth in this report resulted from the absence of a comprehensive or program-specific system of controls designed to prevent ineligible incarcerated individuals from improperly collecting State-administered program benefits. While some departments perform a background check of program applicants using DOC incarceration data, no department is performing a similar check using county incarceration data.

We recommend that:

1. LWD should use county incarceration data to identify inmates who are improperly receiving Unemployment Insurance benefits.
2. LWD should, as deemed appropriate, continue to pursue recovery of the improper Unemployment Insurance payments as identified in this report.
3. The Department of Human Services should work with AOC to develop a cost-effective data-sharing protocol. (AOC has advised us that Bergen County's incarceration data is in the process of being integrated into AOC's data.)
4. The Department of Human Services should, as deemed appropriate, pursue recovery of the improper SNAP, General Assistance and TANF benefit payments as identified in this report.
5. The Department of the Treasury should work with DOC and AOC to develop a cost-effective data-sharing protocol.
6. The Department of the Treasury should, as deemed appropriate, continue to pursue recovery of the improper pension payments as identified in this report.

REPORTING REQUIREMENTS

We provided a draft copy of this report to DCA, the Department of Human Services, LWD and the Department of the Treasury for their review and comment. We received responses from LWD, the Department of Human Services and the Department of the Treasury. We also received a response from DOC, which we had sent a courtesy copy of the draft report. These responses were considered in preparing our final report and are attached as Appendix A. We address selected points from one of the responses in Notes set forth in Appendix B.

LWD's response acknowledged the audit's findings concerning the improperly paid \$10.6 million in Unemployment Insurance payments to incarcerated individuals. The response states that LWD has now implemented the additional safeguards we recommended to prevent future improper payments.

The Department of Human Services' response stated several areas of concern and provided additional information regarding the audit report. We have concluded that those concerns generally do not impact the findings of the audit or already had been accounted for in those findings. The department's response notes that "DMAHS and DFD are working to develop new procedures to address the eligibility issues raised in the audit" and discusses making "every effort to recoup fraudulent disbursed benefits."

The Department of the Treasury's response stated that as recommended, it is in the process of recouping improper payments as appropriate, and has commenced data sharing arrangements with DOC and AOC to prevent future improper payments.

DOC's response cited its willingness "to participate in remedies that eliminate . . . the receipt of benefits [by] those who are not legally entitled."

The Office of the State Comptroller is required by statute to monitor the implementation of our recommendations. To meet this requirement and in accordance with *N.J.A.C. 17:44-2.8(a)*, following the distribution of the final audit report, LWD, the Department of Human Services and the Department of the Treasury shall report to the Office of the State Comptroller within 90 days stating the corrective action taken or underway to implement the recommendations contained in this report and, if not implemented, the reason therefore. *N.J.A.C. 17:44-2.8(a)*.



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May 9, 2013

Mr. William P. Challice, Director
Audit Division
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P.O. 024
Trenton, NJ 08625-0024

Dear Mr. Challice:

Please accept this letter on behalf of the New Jersey Department of Labor and Workforce Development (Department) in response to the State Comptroller's draft audit report on improper Unemployment Insurance (UI) payments to incarcerated individuals.

LWD's Response:

The Department launched an unprecedented anti-fraud campaign the first year Governor Chris Christie came into office. Through a series of measures that began in March 2011, the Department has prevented more than \$232 million from being diverted from the New Jersey Unemployment Insurance Trust Fund (Trust Fund). That is a conservative estimate calculated as of March 2013.

The Department acknowledges the findings of the State Comptroller's audit report which indicates that \$10.6 million of \$13.4 billion in UI benefits paid out during the study period was improperly paid to incarcerated individuals. This period started prior to the arrival of this administration and continued into the early part of our term.

The Department has implemented the additional safeguards recommended in the State Comptroller's audit report.

The State Comptroller contends some of the improper payments could have been averted had the Department been cross-matching UI payments against lists of incarcerated individuals in county jails that are maintained by the Administrative Office of the Courts (AOC). Unfortunately, the Department did not have access to county prisoner data during the study period. However, it did have a long standing agreement in place with the New Jersey Department of Corrections (DOC) under which the Department has been cross-matching UI payments against individuals incarcerated in state facilities. As a result, only \$514,000 of the improperly paid \$10.6 million identified by the State Comptroller was attributed to payments to state prisoners.

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As the State Comptroller's report notes, the Department has entered into a Memorandum of Understanding with the AOC to correct the county prisoner data omissions. The Department is now cross-matching UI payments with individuals incarcerated in county jails, and the first such review for payments was made for the compensable week ending March 23, 2013.

We are confident that our Department is stopping the improper payments of UI benefits to incarcerated individuals. However, the accuracy of the DOC and AOC cross-matching practice relies on information that is beyond the control of the Department. Cross-matching relies on the accuracy of the information given by prisoners to county authorities and the DOC. When that data is not valid - for example, when wrong or phony Social Security Numbers are used as identifiers - accurate cross-matching cannot occur. Inaccurate information can even lead to erroneous matches that prompt the suspension of payments to legitimate claimants.

Cross-matching against inmate rosters is an important tool the Department readily adopted to prevent improper payment of benefits, but it is only one of several controls used by the Department to stop improper claims. Currently, the Department uses 23 cross-match/applications to protect against fraud and error, one of which involves the National Directory of New Hires (NDNH).

Our procedure of cross-matching UI claims against the NDNH has been responsible for stopping an average of 1,800 improper claims payments per week since March 2011. These efforts earned our Department two innovation awards from the U.S. Department of Labor (USDOL) during the first year the practice was in practice. The Department has stopped what the USDOL annually identifies as the most common cause of improper payments nationwide from state UI accounts; people continuing to file UI claims after they have returned to work.

In addition, the department has installed procedures and software to stop phony claims from being filed from overseas, and established an identity-proofing system to prevent those who would from filing claims with stolen identities. The USDOL has since included representatives of the Department on a steering committee for the Federal governments recently formed "Center of Excellence for UI Integrity." The Center is establishing a series of fraud prevention measures for all states to emulate.

Moreover as of May 1, 2013, New Jersey became a participant in the federal Treasury Offset Program (TOP). This is a matching program which garnishes federal tax returns to reimburse the Trust Fund for improperly collected Unemployment Insurance benefits. Anticipated revenue for the first 12 months of participation is estimated at \$14 million.

It is our collective goal at LWD to bring integrity to the UI system in New Jersey, and we are committed to considering every means available to protect the Trust Fund from fraud. We welcome any and all recommendations that help us achieve our goal, and thank you for your recommendations.

If you have any questions, please contact Jerry Calamia, Director of Internal Audit at (609) 292-1885.

Sincerely,



Harold J. Wirths
Commissioner

c: Jerry Calamia
Joseph Latoof
Ronald Marino
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May 8, 2013

A. Matthew Boxer
State Comptroller
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Dear Comptroller Boxer:

I am responding to William Challice's letter of March 22nd concerning an audit conducted by your office regarding "Improper Benefit Payments to Incarcerated Individuals." I am addressing the medical and food program sections which fall under the purview of the Department of Human Services and its Divisions of Medical Assistance and Health Services (DMAHS) and Family Development (DFD).

The Office of the State Comptroller (OSC) conducted an audit of various State and Federal programs to determine if incarcerated individuals were receiving benefits to which they were not entitled. OSC identified \$23.6M in improper payments for the period July 1, 2009 through April 30, 2011 of which \$7.1M applied to Medicaid, \$4.2 million applied to the Supplemental Nutritional Assistance Program (SNAP), and \$1.2 million for Work First New Jersey.

Division of Medical Assistance and Health Services

Background:

The Office of the State Comptroller (OSC) conducted an audit of various State and Federal programs to determine if incarcerated individuals were receiving benefits to which they were not entitled. OSC identified \$23.6M in improper payments for the period July 1, 2009 through April 30, 2011 of which \$7.1M applied to Medicaid.

The Medicaid Fraud Division (MFD) of OSC sent our HMOs (current and former) and LogistiCare detailed data identifying the incarcerated individuals with dates of incarceration and amounts of capitated payments. MFD also sent notices to our FFS providers. The notices requested that all providers analyze the data and advise the MFD of any disagreement with the findings. We are unaware if the HMOs, LogistiCare or the FFS providers have responded to MFD, or the results of their review of the claims data. DMAHS similarly received claims data on April 18th, and is in the process of reviewing the information. Because there are in excess of 50,000 claims, DMAHS is unable at this time to comment on their validity.

Comments on the Draft Audit Report:

Certain of the negative findings were incorrect; others appeared to be based upon a misunderstanding of when federal financial participation (FFP) is appropriately claimed.

- In certain instances, the audit report did not consider service impact or long term cost implications to the State. For example, one HMO identified over \$600,000 in claims paid in a particular month certain inmates were released. DMAHS made the capitation payments at the beginning of the month and then the inmates were released. If we had identified those individuals and not paid capitation, upon release they would become eligible for FFS benefits until reenrolled in an HMO. This would likely be more costly to the State than if we had made the one month capitation payment in question.
- The OSC audit report did not provide information to distinguish between State and county claims for individuals. The applicability of federal financial participation for services for county cases is complex. For example, there are circumstances in which an individual is detained but not booked; detained, booked but not arraigned; detained and arraigned with charges but released on bail; and the like. Depending on the circumstance, Medicaid eligibility may or may not be suspended and federal financial participation for services may or may not be permissible.
- Currently, only a few States have the systems capability to pend or suspend Medicaid eligibility when an individual is incarcerated. New Jersey is building that capacity with its implementation of a new Statewide eligibility determination system, the Consolidated Assistance Support System (CASS) beginning in the fall of 2013, with Statewide implementation expected to be completed by the summer of 2014. In the states that now pend eligibility, the Social Security Administration (SSA) pays counties every 30 days for the county to send SSA a list of incarcerated individuals. SSA then notifies the State. The State then validates the information and determines if the individual is still incarcerated. If so, eligibility is suspended. Because there is a lag in the data, however, and due process is required, the Medicaid agency cannot retroactively terminate a beneficiary's Medicaid eligibility. Under due process, an individual must be notified and provided a right to appeal the determination.
- Additionally, CMS issued guidance to State Medicaid Agencies in 1997 of Medicaid coverage for inmates of public institutions and in 2004 released clarifying guidance on the subject of suspending Medicaid eligibility. It does not appear that this guidance was reviewed and factored into the OSC analysis of potential overpayments.

Comptroller
Note
1

Comptroller
Note
2

Corrective Actions:

- DMAHS formed a work group with the Department of Corrections (DOC) in June 2012 in order to construct a system that would identify Medicaid covered inmates in State institutions. A Memorandum of Understanding (MOU) was signed with DOC in January 2013, which provides for DOC to supply State inmates' Social Security numbers to DMAHS. This information will enable DMAHS to withhold capitation payments, when appropriate, for the identified inmates – who will likely be those who have been convicted and will serve longer periods of incarceration than county inmates.
- DMAHS has engaged with the Administrative Office of the Courts (AOC) to finalize a similar information sharing agreement to obtain county inmate information to address eligibility issues.

- It is unclear whether the audit report has incorporated a thorough review of federal regulations relevant CMS guidance, and considered the impact of the Medicaid expansion in 2014 in its review of the 50,000 claims that are subject to the OSC audit.

Comptroller
Note
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Division of Family Development: Supplemental Nutrition Assistance Program and Work First New Jersey

Background

The Office of the State Comptroller (OSC) conducted an audit of various State and Federal programs to determine if incarcerated individuals were receiving benefits to which they were not entitled. OSC identified \$23.6M in improper payments for the period July 1, 2009 through April 30, 2011 of which approximately \$4.2 million in improper benefit payments to SNAP participants and \$1.2 million in improper payments to WFNJ recipients ((\$395,464 – GA, \$849,744 – TANF) within the Division of Family Development (DFD).

The Department of Human Services, Division of Family Development (DHS/DFD) is responsible for the Work First New Jersey program, which is the State's welfare program, as well as the NJ Supplemental Nutrition Assistance Program (SNAP). SNAP is a federally regulated and monitored program. WFNJ is State supervised and County administered, which means that DHS/DFD receives money from the federal/state government to supervise the program that is administered through the 21 County Welfare Agencies (CWA's) in each of NJ's 21 Counties. The WFNJ program consists of the state funded General Assistance (GA) program for individuals and childless couples, and the federally funded Temporary Assistance for Needy Families (TANF) program for families with children.

Comments on the OSC Audit Report – Supplemental Nutrition Assistance Program

The initial match by OSC on individuals who were receiving benefits and incarcerated included many cases which, in accordance with federal regulation, DFD excludes from reporting any change in household composition. Those exclusions include the following:

- Incarcerated for one day only.
- Imprisoned after the 20th of the month through the 5th of the month.
- Cases where the benefits were cancelled, aged or voided.
- Households that had earned or unearned income (except for TANF or GA) because these households only had to report to the agency if their income exceeded 185% of the federal poverty level.

Comptroller
Note
3

In response to the draft audit report, DFD conducted a random review of 147 cases from the OSC audit. This review indicated that 30 were overpayments and 117 were not overpayments for one of several reasons: incarcerated person was removed from case, aged benefits (after 6 months of inactivity, benefits are cancelled) or not required to report the change.

Comptroller
Note
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The State meets federal regulations which allow households, through simplified reporting, who have earned and unearned income (excluding TANF and GA) from having to report any changes during their certification period, which could last up to 12 months. Based on this regulation, an assessment of the SNAP caseload used during the review period, indicates that 54% of the households that receive this benefit are not required to report any changes, which included incarceration to the county office. Given the federal regulation, it would be appropriate

to decrease the amount of benefit payments identified in the Comptroller's report by 54% of the ineligible benefits.

During Federal Fiscal Year (FFY) 2009, \$753,603,280 was issued in SNAP benefits, \$1,043,154,525 in FFY 2010 and \$1,222,526,837 in FFY 2011.

As noted, the SNAP program is in the process of revising the way in which it reviews potential improper benefits due to an individual being incarcerated. In October 2012, the federal Food and Nutrition Service revised its regulations requiring a match regarding imprisonment. Previously, the agencies cleared applicants through the Department of Corrections (DOC) website, which does not include county incarceration information.

Comments on the OSC Audit Report – Work First New Jersey

With respect to the TANF and GA program components, previously, the CWAs completed an initial match with the DOC records to ensure that a person applying for TANF/GA has not been convicted of certain crimes that would exclude them from being eligible for benefits. Please note that this process did not have access to county incarceration data.

DHS/DFD/CWA currently does not have the ability to conduct monthly checks with DOC to ensure that TANF and/or GA clients are not incarcerated. Due to changes of procedures at DOC, DHS/DFD/CWA are in the process of solidifying a new procedure with DOC regarding access to their client records.

During FFY 2009, \$238,661,156 was issued in TANF benefits, \$255,842,445 in FFY 2010 and \$288,428,324 in FFY 2011. Also, during FFY 2009, \$183,344,312 was issued in GA benefits, \$203,025,044 in FFY 2010 and \$204,755,590 in FFY 2011.

Corrective Action - Supplemental Nutrition Assistance Program and Work First New Jersey

As stated above, DHS/DFD is in the process of solidifying a procedure with DOC regarding access to their client records. Upon reaching an agreement with DOC, DHS/DFD will send instructions to the CWAs to check against the DOC data at the time of client recertification for benefits (which takes place every 6 months for GA and every 12 months for TANF).

In addition, DHS/DFD is in the process of working with the Administrative Office of the Courts (AOC) on a new process regarding access to county jail data as well. Upon reaching an agreement with DOC and AOC, DHS/DFD will send instructions to the CWAs to check against the DOC and AOC data at the time of client SNAP intake/recertification for benefits.

In addition, in April 2013, DHS/DFD sent out an instruction to all CWAs and other entities for SNAP which reminds the CWAs of the current steps necessary to determine whether an existing or potential adult member of an assistance unit is currently incarcerated in a state or county correctional facility. Moreover, effective April 1, 2013, DFD receives a report from Medicaid which identifies all GA clients who were incarcerated during the previous month so appropriate action can be taken to terminate the GA.

Finally, DHS/DFD also anticipates the implementation of a new statewide computer system that is known as the Consolidated Assistance Support System (CASS). Implementation of CASS will ensure appropriate client social service benefit determinations. The CASS system will not permit the continuation of cash assistance benefits unless a redetermination is completed and

the system determines that continued eligibility exists based upon the evidence entered into CASS. If a client fails to present themselves during the recertification appointment (possibly due to incarceration) they will not receive continued benefits.

DFD will make every effort to recoup fraudulent disbursed benefits. DFD, along with the counties, has specific procedures for recouping any funds over \$100. Individuals who are identified as receiving inappropriate payments are provided with due process rights. Once due process is completed, violators are given an opportunity, through a payment plan, to repay the improper benefits. A person who receives benefits from SNAP or WFNJ and are found ineligible for those benefits at a later time are processed for overpayments for the amount of ineligible benefits received by the person or household. If the person receives assistance, there is a 10% reduction of the monthly benefit until the amount of overpayment is recouped. If the case is closed, the fraud amount is submitted to either the Tax Offset Program (TOP) for the SNAP repayment or to the Set off Individual Liability (SOIL) program. These programs intercept Federal income tax returns (TOP), State income Tax return (SOIL) or winning lottery.

In summary, DHS/DFD will continue to work diligently to reduce unallowable improper benefit payments to incarcerated clients through the use of new procedures with the DOC and AOC, and future technology enhancements. Both DMAHS and DFD are working to develop new procedures to address the eligibility issues raised in the audit.

We appreciate the opportunity to review and provide comments to the report. The Department is committed to undertaking this work and making operational changes, if necessary. Should you require additional information, please contact me.

Sincerely,



Jennifer Velez
Commissioner

JV:jc
c: William Challice



State of New Jersey
OFFICE OF THE STATE TREASURER
PO Box 002
TRENTON NJ 08625-0002

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ANDREW P. SIDAMON - ERISTOFF
State Treasurer

May 8, 2013

The Honorable A. Matthew Boxer, State Comptroller
Office of the State Comptroller
20 West State Street, 12th Floor
P.O. Box 024
Trenton, New Jersey 08625

Dear Mr. Boxer:

Thank you for the opportunity to review and respond to the Office of the State Comptroller's audit regarding "Improper Benefit Payments to Incarcerated Individuals." The Department has reviewed the audit as it relates to the Division of Pensions and Benefits.

All of the retirement systems administered by the Division of Pensions and Benefits are subject to the provisions of the following statute, NJSA 43:1-2, which states:

No pension or subsidy shall be paid by this State or by any municipality or school district of this State to any person for the period during which he is confined in a penal institution as a result of conviction of a crime involving moral turpitude, and such person shall lose all right to so much pension or subsidy as he would receive or be entitled to receive had he not been so confined; provided, that nothing herein contained shall prevent the payment of the pension for the sole benefit of the mother, father, wife or minor children of the person so confined in a penal institution if the board or commission administering the pension fund shall determine that such pension is necessary for their maintenance and, thereupon, the board or commission shall provide for the payment to the aforesaid person or persons so determined to be entitled to the benefit of the pension.

The Division has commenced data sharing pursuant to recommendation number 6 in the OSC report. In an effort to identify and prevent State administered retirement system retirees from collecting benefits while incarcerated, the Division has commenced a working arrangement with both the Department of Corrections (DOC) and the Administrative Office of the Courts (AOC) to identify such individuals. This project will compare DOC and AOC information with the current retired payroll database. Matches will result in a detailed analysis to determine if any action is required to suspend or recoup a member's retirement benefits.

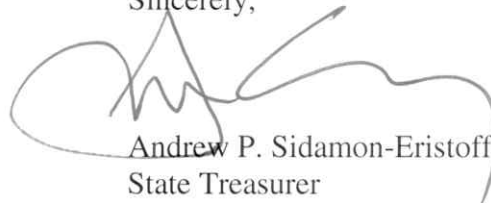
It should be noted that not all incarcerations are as a result of a crime involving moral turpitude, therefore a thorough analysis must be done in every case to determine whether or not the pension should be suspended while a retired member is confined in a penal institution.

Further, as set forth in the statute cited above, a dependent may prove entitlement to continuation of the pension during the retiree's incarceration. Thus, while there will be more retirees identified through this data sharing process, this will not always result in the suspension of all retirement benefits during the periods of incarceration.

In response to recommendation number 7 in the OSC report, the Division has investigated all of the matters identified in the OSC report and is recouping monies, where appropriate.

In addition to the DOC/AOC/DPB data matching process, the Division has acquired LexisNexis matching services to identify out-of state pension recipients who may also need to be investigated.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew P. Sidamon-Eristoff". The signature is stylized with a large loop on the left and a long, sweeping tail on the right.

Andrew P. Sidamon-Eristoff
State Treasurer

c: Dave Ridolfino
Jim Leonard
Florence Sheppard
Dan Povia



State of New Jersey

DEPARTMENT OF CORRECTIONS
WHITTLESEY ROAD
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

GARY M. LANIGAN
Commissioner

May 8, 2013

Honorable Matthew A. Boxer
New Jersey State Comptroller
Office of the State Comptroller
20 W. State Street
Trenton, NJ 08625-0024

Dear Mr. Boxer,

I am in receipt of your draft Audit Report titled Improper Benefit Payments to Incarcerated Individuals. I assure you that the Department of Corrections is ready and willing to participate in remedies that eliminate or substantially reduce the receipt of benefits to those who are not legally entitled.

Current data sharing agreements with the Unemployment Insurance and Medicaid Programs will be reviewed and enhanced to reduce the number of improper benefits paid to State incarcerated individuals. In addition, the DOC is reviewing a draft Memorandum of Agreement with the Division of Pensions and Benefits to share data thereby facilitating its review of beneficiaries. Lastly, the DOC offers full participation in developing DOC data to share with Food and General Assistance program authorities upon request.

Thank you for the opportunity to comment and participate in a solution that will save NJ taxpayer dollars. If you have any questions or concerns with regard to the Department of Correction's participation, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary M. Lanigan".

Gary M. Lanigan
Commissioner

GL:am

c: Judi Lang, Chief of Staff
Carmella M. Elmer, Assistant Commissioner

APPENDIX B
COMPTROLLER NOTES ON AUDITEE RESPONSES

The following notes correspond to the auditee responses as indicated in the margins of those responses.

- 1) State law provides that a person who is incarcerated is not eligible to participate in the Medicaid program. *N.J.A.C. 10:72-3.9*. Our audit identified Medicaid payments on behalf of such incarcerated individuals. The distinctions set forth in the department's response regarding, for example, whether an individual was booked or arraigned are not relevant to this analysis.
- 2) We have reviewed relevant guidance from CMS and nothing in that guidance changes the findings of the report. Specifically, the guidance discusses suspending the Medicaid eligibility of incarcerated individuals, which the department has not done.
- 3) The department's response focuses on federal reporting requirements as opposed to eligibility requirements. Even though some SNAP beneficiaries are subject to a "simplified" reporting process and therefore are not required to affirmatively report changes in their status, that does not render them eligible for SNAP payments while incarcerated. New Jersey law at *N.J.A.C. 10:87-2.2(b)* and *N.J.A.C. 10:87-2.4* and federal law at *7 C.F.R. 273(b)(7)(vi)* both identify such individuals as ineligible for SNAP benefits. In addition, during our audit we removed cases such as where the term of incarceration was less than 30 days and instances where benefits were subsequently cancelled or voided, and so those payments referenced in the department's response are not part of our findings.