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Contact:

Alejandra Lopez
The Legal Aid Society
ALopez@legal-aid.org
917-294-9348

*****FOR IMMEDIATE RELEASE*****

Legal Aid, Freshfields File Lawsuit Against USDA to Secure Replacement of Food Benefits Stolen from Low-Income New Yorkers

Thousands of Low-Income New Yorkers have Fallen Victim to SNAP and Cash Assistance Benefits Theft

NEW YORK, NY – The Legal Aid Society and Freshfields Bruckhaus Deringer US LLP filed a [federal class action lawsuit](#) in the United States District Court for the Southern District of New York on behalf of individual plaintiffs and all New Yorkers who receive Supplemental Nutrition Assistance Program (SNAP), an essential form of federal food assistance for low-income people, who have had their benefits stolen through skimming, a form of electronic theft.

The lawsuit was filed against the United States Department of Agriculture (USDA) and the USDA Food and Nutrition Service (FNS) and seeks to restore the stolen benefits of thousands of SNAP recipients in New York. USDA FNS has refused to authorize New York State to use federal funds to replace the stolen benefits based on a regulation that the federal agency adopted in 2010 that does not give states authority to replace SNAP benefits in instances of skimming.

As a result, New York and other states have taken the position that replacement benefits cannot be issued. Without this much-needed federal assistance, SNAP recipients are left with no ability to feed their families until receipt of the following month's benefits, and must frantically turn to food banks, relatives and neighbors to make up the shortfall.

“Our clients and all low-income New Yorkers who rely on SNAP benefits to feed themselves and their families are suffering tremendously and must be immediately reimbursed for their stolen benefits, which they lost through no fault of their own,” said **Alex MacDougall, staff attorney in the Civil Law Reform Unit at The Legal Aid Society**. “It is unacceptable that the USDA is essentially passing the buck and not taking responsibility for reimbursing victims of skimming, despite legal mandates that protect other forms of electronic theft and the agency’s responsibility to ensure that benefits systems are protected.”

Mary Eaton of Freshfields Bruckhaus Deringer US LLP added: “The regulation Defendants have invoked has nothing to do with skimming and provides no basis for their refusal to reimburse needy New Yorkers who were deprived of their benefits through no fault of their own.”

The lawsuit seeks to enforce a federal statute mandating replacement of electronic SNAP benefits in the same manner that stolen coupons were replaced. Under the previous system, when paper coupons were stolen prior to their receipt, the participating family could claim reimbursement of stolen benefits. Currently, even when a household loses its benefits due to skimming from the government SNAP account before it could access them, USDA prohibits the state agency from issuing reimbursement using federal funds.

Although a provision of the December 2022 omnibus spending act authorizes replacement of benefits stolen after October 1, 2022, it only allows replacement of two months of SNAP, and provides no remedies for families, like plaintiffs, who were robbed prior to October.

Background:

The SNAP Program was created in 1964 to establish the federally funded, state-administered program in order to “safeguard the health and well-being of the Nation’s population by raising levels of nutrition among low-income households.”

The FNS oversees SNAP and sets regulations for all state agencies administering SNAP programs. In New York, OTDA is responsible for administering SNAP and issuing benefits via an EBT system, as required by federal law.

In 2022, OTDA documented an [increase](#) in an illegal practice known as “skimming” across New York State. Skimming involves the use of a device that is secretly installed at a retail point-of-sale (POS) machine that captures the data on a card and remotely transmits it to a thief offsite.

According to OTDA, as of February 2023, there have been over 10,000 documented cases of benefit theft by perpetrators of EBT card skimming schemes. From January 2022 through mid-February 2023, over \$4.6 million in SNAP benefits were skimmed in New York State. The majority of the benefits skimmed during this period came from households residing in New York City.

On December 1, 2022, The Legal Aid Society and Empire Justice Center sent a [letter](#) urging OTDA to compensate victims of skimming and to take immediate prevention actions to protect New Yorkers from further victimization, including converting all magnetic stripe EBT cards to chip cards.

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The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 145 years, we have protected, defended, and advocated for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. <https://www.legalaidnyc.org>