



TIME TO LEAVE FINGER PRINTS BEHIND

Fair Hearings in NYC Show How Unfair Finger Imaging is for New Yorkers

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ACKNOWLEDGEMENTS

The authors would like to acknowledge Barbara Weiner, whose extensive knowledge and expertise was instrumental in the conception, framing and editing of this report. Special thanks to MAZON: A Jewish Response to Hunger for their financial support of our anti-hunger advocacy work.

ABOUT EMPIRE JUSTICE CENTER

Empire Justice Center is a statewide, public interest law firm with offices in Albany, Rochester, White Plains and on Long Island. Empire Justice focuses on changing the “systems” within which poor and low-income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation backup to local legal services programs and community based organizations. As an advocacy organization, Empire Justice engages in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, Empire Justice provides legal assistance to those in need and undertakes impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

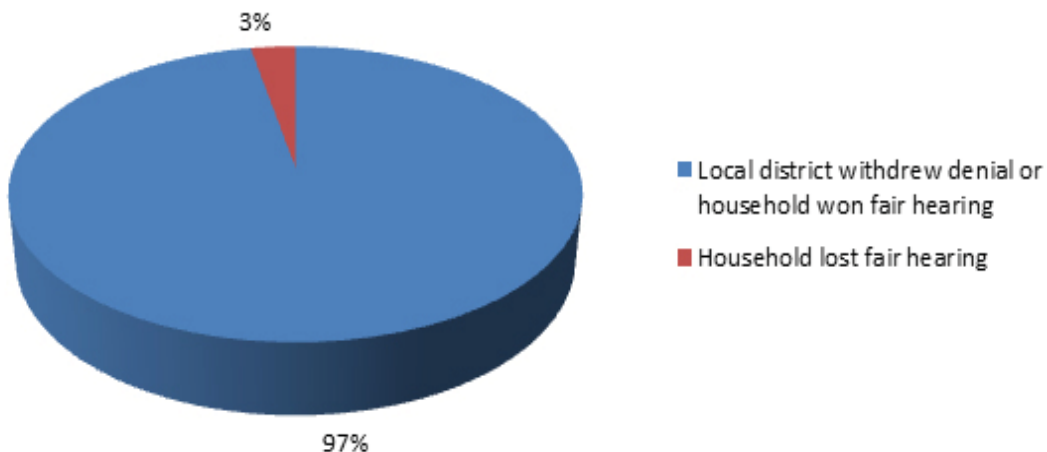
TIME TO LEAVE FINGER PRINTS BEHIND

Across the country, states have overwhelmingly abandoned finger imaging people applying for Supplemental Nutrition Assistance Program benefits (SNAP, formerly known as Food Stamps) as a fraud prevention tool, calling it costly and ineffective. Only New York and Arizona persist. Here in New York, analysis of new data reveals that New York’s finger imaging requirement has directly resulted in hundreds of households just in New York City being wrongly denied SNAP benefits. The analysis found that the finger imaging requirement repeatedly and unnecessarily left families with children, elderly and disabled individuals - both young and old - without desperately needed nutritional assistance.

Finger imaging of SNAP recipients takes place all over New York State, but it is not required by statute. Most districts outside of New York City take the option to exempt the elderly, the disabled, working families and those households that are interviewed by phone from the requirement. However New York City, home to 60% of all SNAP recipients in the state¹ has by far the most stringent finger imaging requirements and provides very few exemptions.

This new analysis was conducted to determine whether there were any trends to be found when individuals had requested a Fair Hearing after losing or being denied SNAP benefits in conjunction with finger imaging. Fair Hearings are the administrative judicial process that allows applicants or recipients of SNAP and other public benefits to challenge decisions made by the state or local agency administering these benefits.

Breakdown of Fair Hearing decisions challenging SNAP denials due to failure to comply with finger imaging



After reviewing twelve months of New York City Fair Hearing decisions that involved fingerprinting, Empire Justice Center found that, among the 482 SNAP finger imaging related decisions reviewed, **New York City’s Human Resources Administration (HRA) had improperly denied or discontinued SNAP in more than 97% of the cases. In many cases, the discontinuances violated federal law.**

HRA’s improper actions meant that the families and individuals waited months for their cases to be resolved through the Fair Hearing process. In the meantime, they went without the SNAP benefits they were entitled to – and New York’s economy went without the significant federal funds that come into the state through SNAP.

The bottom line? This new information adds fuel to efforts in New York City and across the state to eliminate the finger printing requirement all together. There is no reason for New York to continue using an antiquated, costly and ineffective tool that is causing struggling New Yorkers unnecessary harm.

To streamline the application process and address the needs of hungry New Yorkers who are being improperly denied access to federally funded nutritional assistance, we recommend that the state immediately begin taking steps to end this misguided policy. New York should let Arizona have the lone distinction of fingerprinting applicants for federal nutrition assistance.

The good news is that there is quick and simple solution. It is not necessary to pass legislation to rescind the policy. There are no state or federal statutes requiring finger imaging for SNAP purposes, making it possible for the Governor to simply issue an Executive Order or the state’s Office of Temporary and Disability Assistance (OTDA) to rescind the state regulation containing the finger imaging requirement. We urge the Executive to take one of these actions immediately.

BACKGROUND:

SNAP benefits help New York and New York families in many ways. In addition to providing nutritional support to individuals and families who are struggling to make ends meet, the 100% federally funded benefits are spent locally, driving an estimated \$5 billion or more each year into local businesses and economies.

Over the past decade, SNAP enrollment in New York has steadily increased, due in no small part to the state’s efforts to encourage people to apply for the federally funded program. From investments in the Nutrition Outreach and Education Program (NOEP), the launching of the MyBenefits.gov screening portal and online application, the Working Families Food Stamp Initiative and adoption of expanded categorical eligibility,² the state has actively worked to remove barriers to accessing SNAP. As one would expect, SNAP enrollment has accelerated dramatically as the economy has worsened, and the amount of federal SNAP benefits flowing into the

SINGLE MOM AND ADULT DISABLED CHILDREN MADE TO WAIT 3 EXTRA MONTHS FOR BENEFITS

Jane Doe, a 54 year old woman, lives with her 3 children, ages 15, 21 and 30. Jane is caretaker for her two adult children who have severe disabilities: the 21 year old has cerebral palsy and is wheelchair bound and the 30 year old is autistic.

Jane applied for SNAP for herself and her children on May 19, 2011.

HRA denied the application a month later on June 18, 2011, because the two adult children did not get finger imaged.

Jane requested a Fair Hearing on June 29, 2011.

Jane's Fair Hearing was held on September 7, 2011. Jane testified that her adult children cannot comply with finger imaging because of their disabilities. HRA agreed at the Hearing to cancel the denial and re-evaluate the household's eligibility for benefits.

A written Fair Hearing decision was issued on September 9, 2011. Three and a half months lapsed since the original application date. Jane then had to wait for HRA to review the case.

At least another two weeks would pass before she could begin receiving benefits, leaving this eligible family without assistance for approximately three months.



state's economy has more than doubled since 2007. According to the most recent numbers available, there are currently just over 3 million SNAP recipients in New York State - a 69% increase since January 2007. The monthly dollar value of federal SNAP benefits flowing into New York was \$453 million in August, 2011.³

The imposition of finger imaging requirements for SNAP has never been mandated by either state or federal statute. Although the USDA allows states to conduct finger imaging for the purpose of preventing duplicate participation, most recently they have encouraged states to use alternatives out of concern that finger imaging has a chilling effect on the application of vulnerable populations. Here in New York, the finger imaging requirement is only set out in regulation,⁴ which requires local social services districts to finger image adults 18 years of age or older, but allows them to exempt certain groups from the requirement. These exemptions are outlined in a plan that is filed with the state.

In 2004, the New York State Office of Temporary and Disability Assistance (OTDA) issued a local commissioners memorandum acknowledging that the finger imaging requirement may pose a hardship for many groups of SNAP households. Districts were encouraged to amend their finger imaging plan to expand the categories of households who could be excused from finger imaging. The categories included the elderly, disabled, the homebound, those employed during SNAP office hours, people with transportation hardships, as well as those eligible for a waiver of the in-person interview requirement.

Most districts had already chosen to exempt homebound individuals, but amended their plans to excuse the other groups of individuals. However, New York City, home to the vast majority of all SNAP recipients, did not follow suit, giving it the distinction of having by far the most stringent finger imaging policies of any local district.

Finger imaging was once touted as the most technologically advanced tool to prevent individuals from being able to open multiple SNAP cases so that they could receive additional benefits. That was more than 15 years ago. Today the process has been widely discredited. Indeed, just this year, after careful consideration, both California and Texas ended their SNAP finger imaging requirement, leaving New York and Arizona the only remaining states to require finger imaging of SNAP households.

Now that all but one other state has abandoned the practice, we believe it is incumbent upon our state policymakers to step back, reevaluate the cost, the administrative burden and the human impact of continuing to use finger imaging for fraud prevention. We believe that such an analysis will reveal that it is no longer the right tool for the job. Consider the following:

1. Repeated studies⁵ have shown that finger imaging is ineffective in detecting fraud. The only fraud that finger imaging can potentially detect is receipt of duplicate benefits where an individual applies for benefits in more than one social services district.
2. Finger imaging is not able to detect more common types of fraud, such as unreported income, a false absentee parent claim, inaccurate reporting of the number of dependents or misuse of SNAP.⁶ Finger imaging cannot be used to track duplicate participation in other states.
3. Finger imaging is expensive. New York pays a private contractor over \$5 million per year to administer the finger imaging program.⁷
4. States that do not have finger imaging successfully rely on other data matching programs to guard against duplicate participation and other types of fraud.
5. The USDA has found that participation of eligible households in the SNAP program is seven percentage points lower in states that use finger imaging and other biometric technologies. A national SNAP program access study released in 2004 concluded that finger imaging deterred eligible households who weren't receiving SNAP from completing the application process.⁸
6. Requiring finger imaging clearly discriminates against people who have difficulty getting to the office to have it done, primarily due to employment, transportation hardship, advanced age or disability.

7. The intrusive nature of finger imaging deters elderly individuals from accessing SNAP.⁹ This is especially troubling because elderly individuals have the lowest SNAP participation rate of all demographic groups measured by USDA.¹⁰
8. The majority of households apply and recertify for SNAP by mail or online, and have their interview conducted by telephone. For these households, finger imaging is the lone item that requires them to travel to the local district office.
9. A 2009 New York City Coalition Against Hunger study found that nearly 40 percent of the respondents had to miss one day of work or more to provide a finger image in order to receive benefits, causing a loss of income and in some cases putting jobs at risk.

There are other more effective, less expensive ways to prevent fraud. Finger imaging technology wastes scarce tax dollars and most importantly, finger imaging reduces participation by eligible households. Given New York's commitment to improving access to SNAP benefits, the continued use of an archaic and ineffectual tool that, in the name of fraud prevention, is in fact erecting a barrier to federally funded nutrition assistance for the most vulnerable among us, is inconsistent and counterproductive.

WHY DID WE CONDUCT THIS ANALYSIS?

While there have been many studies and repeated anecdotal evidence that finger imaging presents a barrier to eligible households, it has been very difficult to obtain hard data showing what is happening to individuals “on the ground” who are required to be finger imaged here in New York.

The NYS Office of Temporary and Disability Assistance (OTDA) provided statistics in October 2010 on the number of SNAP finger imaging denials in New York State. Between January 2009 and July 2010, 5,958 households were denied or cut off from SNAP benefits due to failure to comply with finger imaging requirements.¹¹

While the large number of denials raised red flags, it was impossible to tell from this data why households hadn't complied.

Fortunately, a new data resource became available late last year when OTDA launched their online Fair Hearing database. The database contains all Fair Hearing decisions in redacted format (with client identifying information removed). Using this resource, Empire Justice Center undertook a review of Fair Hearing data involving SNAP finger imaging denials and discontinuances to see what, if anything, we could learn. What we found was disturbing.

METHODOLOGY:

Empire Justice Center's review encompassed a year's worth of New York City Fair Hearing decisions involving finger imaging denials or discontinuances. There were not enough decisions involving upstate districts to make the analysis statistically conclusive, so we did not include them in our analysis.

The data we reviewed does not represent all households who were denied SNAP because of finger imaging. The Fair Hearing decisions reflect a subset of this group: households in New York City who were denied or discontinued from SNAP because they did not go to a finger imaging appointment, AND who requested an appeal of this decision.

THE ANALYSIS:

We reviewed a total of 482 decisions involving finger imaging, issued between November 1, 2010 and October 31, 2011.

1. In 395 cases (82%), HRA voluntarily agreed to withdraw the original discontinuance or denial. Voluntary withdrawals occur when an agency recognizes they made a mistake or new information becomes available that would support a re-evaluation of the case.
2. 87 cases (18%) were decided by Administrative Law Judges (ALJ). Of those 87 cases:
 - 86% (75 cases) were favorable to the household, meaning that HRA's decision was overturned.
 - 14% (12 cases) were won by HRA, meaning the household couldn't get SNAP unless they re-applied and underwent finger imaging.
3. Ultimately, 97% of the 482 decisions (470 cases total) wound up having their finger imaging denials or discontinuances thrown out through the Fair Hearing process because some component of HRA's action was wrong or improper, or new evidence came to light.
4. Only 3% affirmed HRA's action, thereby requiring the household to comply with finger imaging.
5. Overall, we believe that the vast majority of the 470 households whose denials were thrown out were ultimately able to receive SNAP benefits. In the meantime, they were made to experience unnecessary hardship as they waited for the Fair Hearing process to play out. The household had to file a Fair Hearing request, wait for the Hearing to be scheduled, appear at the Hearing and then wait to receive a decision in the mail. The entire process usually takes 2 to 3 months, if not longer.

6. Given this snapshot, it is extremely likely that many more households lose benefits as a result of agency mistakes and simply reapply or give up, but never request Fair Hearings.
7. As noted below, the people who are invariably caught in the finger imaging trap are those who have the most difficulty complying either because they are elderly, disabled, a working single parent, or they simply misunderstand the rules. This study also shows that even people who were willing and able to go through the process were negatively impacted by bureaucratic barriers inherent in the operation of the system.

WHO ARE THE 3%?

Of the individuals in the three percent of the cases reviewed who lost their Fair Hearing, the Administrative Law Judge found that the individual who did not get finger imaged did not have a good reason for missing the appointment.

1. Several decisions involved families where one household member (usually an 18-21 year old child) who, for one reason or another, failed to get finger imaged. As a result, the entire household lost their SNAP benefits.
2. In one case, a woman mistakenly believed she was exempt from finger imaging because she was disabled and received Supplemental Security Income (SSI). The Administrative Law Judge found that this was not good cause for missing her appointment.
3. Another case involved someone who got finger imaged late, after the original appointment date HRA had set. The ALJ found that failing to keep the original finger imaging appointment was a lawful basis to discontinue the household's SNAP benefits.
4. In another case, a single mother explained at her Fair Hearing that she could not get her 19 year old son to cooperate with finger imaging requirements. The ALJ upheld the HRA's decision to discontinue SNAP benefits for the entire household.



WHO ARE THE 97%?

Most of these decisions were voluntary withdrawals. They generally contain very few, if any, facts about the individual circumstances of the households. We can presume that finger imaging got in the way of these households' access to SNAP. We can tell from the language in the decisions that when the household had been denied or cut off from SNAP, they requested a Fair Hearing because they disagreed with HRA's decision, and after they requested the Fair Hearing, HRA agreed to void (cancel) the original denial.

The winning Fair Hearing decisions and some of the voluntary withdrawals offer insights into each household's particular circumstances. Out of this batch, we detected some alarming trends. The following categories of households were all wrongly denied access to SNAP because of finger imaging requirements:

The elderly:

- A 61 year old who was never notified of her finger imaging appointment
- An 83 year old homebound man who couldn't get to his appointment
- A 90 year old woman who has trouble getting around

People with disabilities:

- A 30 year old with autism
- A 21 year old wheelchair bound woman with cerebral palsy
- An amputee who suffers from vertigo
- Other homebound individuals

Households with children:

- Several cases involved erroneous determinations which wound up denying SNAP to the children as well as their parents.

Households who were trying to comply:

- One man showed up for his appointment but was not finger imaged. He was told to go home and wait for a letter in the mail. The next letter he got was a SNAP denial.
- Another man never got an appointment letter or any information about where to go to be finger imaged. He was denied benefits.
- A woman called HRA to ask that her 19 year old daughter's finger imaging appointment be rescheduled, because the daughter was in the hospital. Instead, HRA sent a discontinuance notice.

Households who went through with the finger imaging process:

- In a number of cases, HRA denied or terminated SNAP for failing to be finger imaged even when households had complied with the requirement.

MAJOR AREAS OF CONCERN:

- 1. Erroneous denials of SNAP meant eligible households went months without nutritional assistance:**
 - Applicants received their favorable outcomes several months after their original application date. In the meantime, they went without SNAP.
- 2. Most of the SNAP terminations violate federal SNAP law:**
 - HRA is terminating recipient households during their certification period, in violation of federal rules.
 - There are very limited circumstances in which a SNAP office would be permitted to shorten a household's certification period and cut off benefits. Missing a finger imaging appointment is not one of those circumstances.
 - If the household is already receiving SNAP, and an existing or new household member needs to be finger imaged,¹² HRA is supposed to wait until the next recertification before calling the person in for finger imaging.
 - Only one termination actually discontinued benefits at the recertification point.¹³ All of the other discontinuances we found happened in the middle of the household's certification period, contrary to federal rules.
- 3. Failure to accommodate persons with disabilities:**
 - Disabled individuals were denied benefits without being granted finger imaging exemptions, having individual "good cause" determinations made or receiving other accommodations.
- 4. Finger imaging is squarely at odds with other state and federal requirements:**
 - State and federal regulations require SNAP offices to exempt individuals with hardships from the in-person interview requirement. These same individuals are required to travel to the food stamp office to undergo finger imaging.
- 5. Finger imaging adds significant administrative costs:**
 - Substantial resources are expended by both HRA and OTDA in the Fair Hearing process, particularly given that the agency was responsible for the vast majority of problems and won just 3% of Fair Hearings.
 - All cases must be reprocessed by HRA workers after a household wins a Hearing or it is returned for review.
 - The large number of erroneous decisions and additional administrative resources expended on these cases raises further questions about cost-effectiveness of finger imaging.

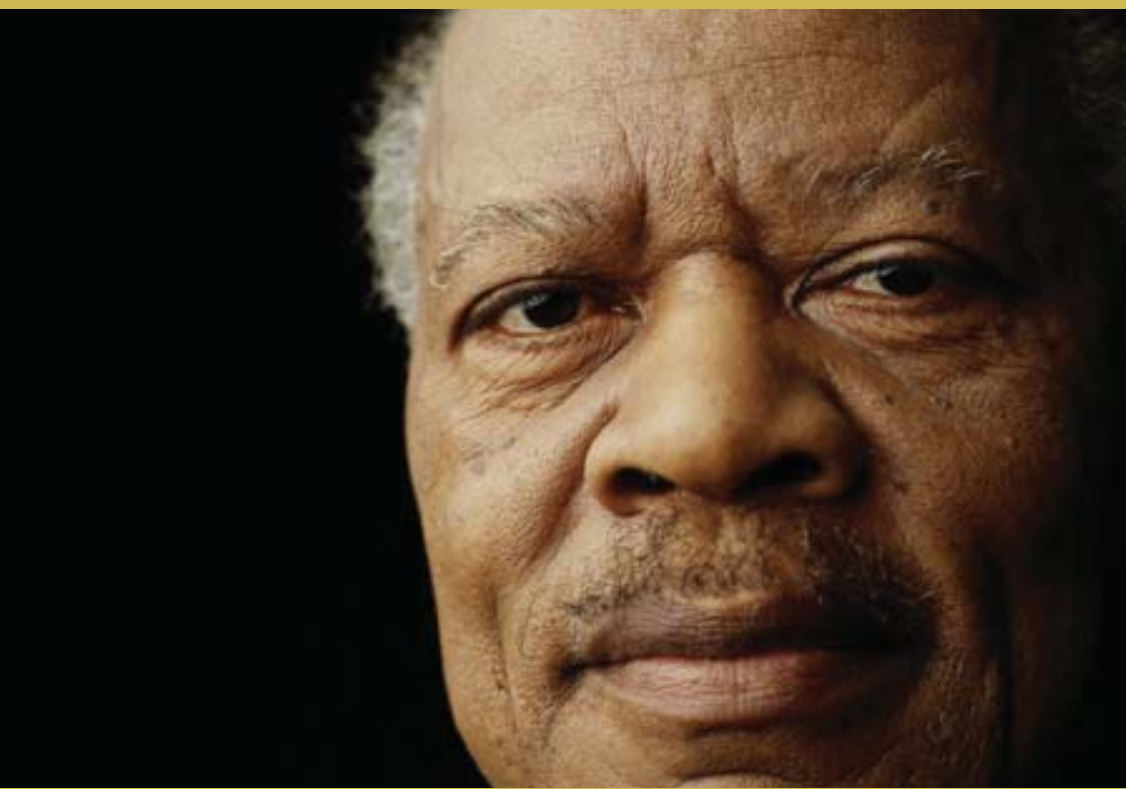
CONCLUSION:

Empire Justice Center's snapshot analysis of a year's worth of Fair Hearing data strongly supports what numerous studies have shown and advocates in communities across the state have told us:

Finger imaging presents a significant access barrier to eligible SNAP households, particularly elderly, disabled and working households.

Given the tough financial choices that must be made, New York State must take steps to join the 48 other states that have eliminated the finger imaging requirement from the SNAP Program.

To do so, we urge the Governor to move quickly to remove the requirement statewide. Doing so will improve administrative efficiency, conserve state resources and most importantly, will improve access to this critical nutritional benefit for our most vulnerable New Yorkers.



NOTES:

- 1 <http://otda.ny.gov/resources/caseload/2011/2011-08-stats.pdf>
- 2 Expanded categorical eligibility allows households to access SNAP even if their resources are above the federal asset limit (\$2000/\$3000 for elderly/disabled).
- 3 OTDA Caseload Statistics available at <http://otda.ny.gov/resources/caseload/>
- 4 18 NYCRR 387.9(c)
- 5 See pp. 69-70 of "Access and Access Barriers to Getting Food Stamps: A Review of the Literature", Food Research Action Center, February 2008, available at <http://frac.org/wp-content/uploads/2009/09/fspaccess.pdf>
- 6 State of California, 2007. "SFIS Program Objectives." http://www.sfis.ca.gov/program_objective.html
- 7 <http://otda.ny.gov/contracts/qpsc/qpsc-cogent.pdf> Note: The contract also covers finger imaging for adults receiving cash assistance, approximately 260,000 individuals statewide. There are about 1.7 million adults receiving SNAP.
- 8 <http://www.ers.usda.gov/publications/efan03013/efan03013-3/efan03013-3.pdf>
- 9 http://www.urban.org/UploadedPDF/411277_food_stamps_FR.pdf
- 10 In fiscal year 2009, the national participation rate for elderly individuals was 34%.
<http://www.fns.usda.gov/ora/menu/Published/SNAP/FILES/Participation/Trends2002-09.pdf>
- 11 Per FOIL response dated 10/13/2010 from Michael Hayes, OTDA public information officer, to Cathy Roberts of Empire Justice Center.
- 12 This happens most commonly when a child in the household turns 18 or someone new joins the household.
- 13 HRA voluntarily agreed to withdraw the discontinuance.



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