MINISTRY OF SOCIAL DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Evidence Brief

The use of benefit bans

2012

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Date of publication

This report was completed in 2012, and published in the MSD Research Archive website in September 2019.

ISBN

Online 978-0-9951244-0-0

EVIDENCE BRIEF: The use of benefit bans

Key points

- A ban on receiving social assistance may be imposed for several reasons (typically prosecution for welfare fraud or drug-related felonies). The ban may be time-limited or for a lifetime.
- Welfare fraud refers to the fraudulent receipt of funds from public social assistance programmes for which an individual otherwise would not be eligible. Several jurisdictions have made the prevention, detection, correction, punishment and deterrence of welfare fraud a priority. Measures have included the use of benefit bans for those convicted of fraud.
- In Canada, British Colombia and Ontario both introduced lifetime benefit bans for those convicted of welfare fraud. The lifetime ban was later repealed in Ontario following the suicide of a pregnant woman subject to the ban.
- In the US the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 allows states to deny access to federal assistance, including food stamps and housing, to those convicted of drug-related felonies and welfare fraud. There is considerable variation across states in how this legislation is enacted. Some states have instituted lifetime bans whereas many have not. States were encouraged to investigate fraud before and after applicants received benefits with many states establishing pre-eligibility fraud investigation units. There is surprisingly little scholarly research on welfare fraud post-PRWORA.
- In the UK, following the enactment of the Welfare Reform Bill in 2012, a wide range of tougher powers to deal with welfare fraud will be introduced, including the loss of benefits for up to three years. Northern Ireland has introduced similar measures.
- Criticisms of banning people from social assistance include that:
    - it contributes to increased stigmatisation and criminalisation of welfare recipients
    - withdrawing a benefit is likely to exacerbate other poverty-related risks
    - the process is costly eg many recipients are investigated but few are actually banned.

This brief provides an overview of the evidence regarding banning access to welfare benefits following a conviction for welfare fraud. Other instances where benefit bans are imposed are also included. A benefit ban may be temporary or for a lifetime.

What is welfare fraud?

Welfare fraud refers to the fraudulent receipt of funds from public social assistance programmes for which an individual would otherwise not be eligible (Kimel, 2007).

The incidence of welfare fraud is often difficult to determine because there is a lack of definitional clarity and precision as to just what is meant by the term 'welfare fraud'. For example, welfare overpayments – often an administrative error on the part of the state – are included in welfare fraud statistics[1]. Given the lack of definitional clarity regarding 'fraud', reports on its incidence vary dramatically (Mirchandani & Chan 2005; Mosher & Hermer 2005). Reports of the savings made from increased fraud detection measures are also variable (Mirchandani & Chan 2005; Prenzler 2011a; Prenzler 2011b).

Several authors argue that only a small number of people commit large-scale malicious benefit fraud and view anti-fraud measures as overly punitive. They argue cases of welfare fraud typically involve applicants misrepresenting their financial status when applying for benefit or in caseworker interviews, or a failure to report changes in personal or financial circumstances (eg entering a new relationship, starting a job) (Barker & Lamble 2009; Kimel 2007). This behaviour generally stems from a misunderstanding of the system's many complex rules rather any criminal intent (Kimel 2007; Mosher & Hermer 2005; Swan et al. 2008).

Several authors argue that the presentation of welfare fraud as widespread has led to welfare recipients being seen in a negative way – as a burden and a matter for regulation, policing and crime control (Gustafson 2009; Kimel 2007; Mosher & Hermer 2005). They argue that this builds upon and further entrenches the stereotype of social assistance recipients as criminals, who prefer to exploit the system rather than work for a living (Mosher & Hermer 2005, Swan et al. 2008).

Alternatively, other authors argue that welfare is too easy to obtain, that tough sanctions against fraud are needed and that welfare fraud reduces government spending in areas of general welfare such as health and education (Prenzler 2011b). Tough anti-fraud measures are seen as a necessary part of any strategy to reduce the number of people in receipt of social assistance[2].

In this context several jurisdictions have put in place policies aimed at detecting and dealing with cases of benefit fraud. Benefit bans are part of the range of measures used to reduce benefit fraud.

International examples of benefit bans

Canada: British Colombia and Ontario introduced benefit bans but they were later repealed in Ontario

In 1998 the Ontario conservative government amended the Ontario Disability Support Program Act and the Ontario Works Act. The amendments made individuals convicted of welfare fraud subject to a suspension of welfare benefits for three months. Later, in April 2000, the penalty for fraud was increased again, from a three-month suspension to a lifetime ban from receiving new social assistance payments (Kimel 2007).

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[1] For example, in the UK around one-third of DWP overpayments are due to fraud (£1bn), and two-thirds due to error (equally split at £1.1bn customer error and £1.1bn official error). Underpayments are also a significant problem, with the latest estimates putting them at £1.3bn, or 0.9% of total expenditure (HM Revenue and Customs & Department for Work and Pensions, 2010).

[2] See also www.camacdonald.com/fraserep.htm#Executive%20Summary
www.fraserinstitute.org/publicationdisplay.aspx?id=13457&terms=fraud
www.fraserinstitute.org/publicationdisplay.aspx?id=11874&terms=fraud

This was part of a raft of measures aimed at reducing benefit fraud, including:

- establishment of a social assistance fraud control unit and for each delivery agent to establish a local fraud control unit
- increased information sharing to assist in fraud detection
- introduction of 'consolidated verification procedures'. The sweeping consent signed as a pre-condition to receipt of benefits, together with the extensive and ongoing reporting requirements, permit the Ministry to gather and share vast amounts of information about those in receipt of social assistance. The regulations also authorise random 'home visits', with or without notice, to verify eligibility
- the establishment of welfare fraud hotlines (Mosher & Hermer 2005).

Moreover, a conviction of welfare fraud often involves a harsh sentence eg several months of prison for relatively small amounts of fraud (less than $5,000) for a first offender (Kimel 2007).

Banning people from accessing welfare assistance was particularly controversial. The court in Broomer v. Ontario noted some of the effects of such a ban, which targeted persons who are already most disadvantaged in society, and punished them by making them more disadvantaged (Kimel 2007). There was increased criticism of the ban after a pregnant woman, Kimberley Rogers, died in her apartment during a 2001 heat wave while she was under house arrest for collecting both welfare assistance and student loans. An inquest into her death ruled it a suicide caused partly by her desperation over finances. The constitutionality of the lifetime ban was under challenge when the Liberal government announced the repeal of the lifetime ban in December 2003 (Mosher & Hermer 2005). Instead, overpayments are now deducted from future welfare cheques (Kimel 2007).

In British Columbia (BC) those convicted under the criminal code of welfare fraud face a lifetime ban from income assistance. If a person is convicted under the BC Employment and Assistance legislation, a sanction is applied for 12 months for the first conviction, 24 months for a second conviction and life for a third conviction. If the BC Ministry of Social Development obtains a civil court order or a person signs an acknowledgement form, a sanction may be applied for three months for the first occurrence, six months for a second occurrence and 12 months for each additional occurrence.[3]

Mirchandani & Chan (2005) were critical of the approach to welfare fraud used in Ontario and BC, arguing that the number of people permanently banned from receiving welfare assistance following a conviction for fraud is small compared to number investigated.

US: Welfare benefits can be denied to immigrants and those convicted of felonies (including welfare fraud)

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 allowed states to deny access to federal assistance, including food stamps and housing to certain groups. There is surprisingly little scholarly research on welfare fraud post-PRWORA.

The punishment for welfare fraud varies from state to state.

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[3] See www.eia.gov.bc.ca/publicat/bcea/Fraud_Sanctions.htm

- ***People who commit welfare fraud may lose access to federal assistance***. If an individual loses benefits in any federally funded, means-tested programme due to fraud, she or he will not only lose benefits under that programme, but also become ineligible for increased benefits under any other programme (eg if they lose their cash aid they cannot offset it with an increase in their food stamps or housing assistance) (Gustafson 2009).

  After PRWORA was introduced many states stiffened their own civil and criminal penalties for welfare fraud. California, for example, adopted a "three strikes and you're out" rule for intentional programme violations. In addition, California imposes stiff criminal penalties for welfare fraud, including permanent exclusion from aid. This comes on top of any penalties that the criminal justice system might impose for a conviction of fraud or perjury (Gustafson 2009).

  States were encouraged to investigate fraud before and after applicants received benefits. Many states established *pre-eligibility fraud investigation units*, which conducted investigations of individuals applying for cash aid. The pre-eligibility fraud investigation units check on welfare applicants' assets, sources of property, household composition, and address[4]. Welfare *fraud investigations of existing clients* are commonplace but evidence of fraud is often not found[5]. Not all states pursue cases of welfare fraud through the courts. Some have put in place fraud diversion schemes, eg Wisconsin (Gustafson 2009).

  Concerns about the extent to which welfare fraud has been pursued include the:

    - high cost of convicting welfare recipients. Gustafson (2009) concluded that the cost savings may actually only be cost-shifting – either between federal, state, and local coffers; or from the welfare system to the criminal justice and foster care systems
    - blurring of the lines between welfare administration that is separate from welfare fraud investigation and prosecution agencies
    - privacy and rights of those on welfare being undermined
    - lack of clarity around what constitutes welfare fraud (eg including errors as fraud)
    - increased barriers for genuine welfare applicants because the application process has become longer, as more bureaucratic rules are introduced to spot inconsistencies in benefit claims.

- ***People are ineligible for welfare benefits and food stamps if convicted of any drug-related felonies*** (including drug trafficking and drug possession offences). Fugitive felons are also ineligible. This affects not only the offender, but also the offender's household (Tramontano 2006).

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[4] States also investigate existing clients and these investigations can be triggered if:

- a data exchange based on a recipient's Social Security number identifies an inconsistency in information.
- a welfare caseworker suspects a problem and initiates an investigation
- an anonymous call to one of the state or county welfare fraud hotline numbers, or by any other form of tip provided to the welfare office.

[5] For example, California investigated 2.44% of its TANF aid caseload each month between October and December 2007, though in some counties the rates of investigation were much higher. However a 2003 Los Angeles audit found only 34% of statewide fraud investigations and 30% of Los Angeles fraud investigations produced evidence of fraud.

In December 2001, 42 states had adopted the drug felony ban either in part or in full, but by 2005 this had fallen to 32. States choose the criteria they use to determine eligibility for government assistance for individuals convicted of drug-related felonies. There is considerable variation across states in the criteria used.

- In 15 states, all drug related charges – regardless of seriousness – disqualify an individual from welfare receipt for life.
- Other states that exclude convicted drug felons from public assistance have modified their exclusions in various ways (eg disqualifying individuals convicted of manufacturing or distributing drugs, but not those convicted of using drugs).
- Access to assistance can be reinstated in some states. Parents can re-qualify for aid if they participate in or complete drug treatment programmes. In some states adults can become eligible for assistance 12 months after being released from prison.
- Only 15 states bar those convicted of drug offences from receiving food stamps for life (Gustafson 2009).

African American or Latino women from difficult backgrounds, often with mental health and/or substance abuse problems, have been disproportionately affected by these policies (Allard 2002; Frost et al. 2006).

- ***Those who violate the terms of parole or probation can also be denied access to government benefits.*** This includes not only TANF benefits, but also food stamps, SSI, and housing assistance (Gustafson 2009).
- ***Access to government-subsidised housing can be severely limited as a consequence of not only criminal convictions, but also criminal activity that does not necessarily result in a conviction***. An individual may be denied admission to federal and state government-subsidised housing because of a past conviction and can be evicted due to convictions or criminal activity that occurs after admittance into a housing programme. These consequences are far-reaching in that they do not only affect the offender's access to government-subsidised housing. A non-offender residing in public housing can lose access to because of the criminal activity of a housemate or guest (Tramontano 2006).
- ***PRWORA also ended eligibility for all immigrants to federal means-tested entitlements***. This included federal cash assistance, food stamps, and Medicaid (Yoo 2008).

In a vicious cycle, losing public benefits is likely to make it harder for those with criminal records to stay clean and sober, avoid abusive relationships, take care of any children they have, and resist engaging in criminal activity (Frost et al. 2006, Hirsch et al. 2002). Gustafson (2009: 715) argues that

> *"These policies and practices are rooted in the notion that the poor are latent criminals and that anyone who is not part of the paid labor force is looking for a free handout. In many ways, the policy goal of punishing non-working welfare recipients, welfare cheats, and aid recipients who engage in unrelated crimes has overwhelmed the goal of protecting poor families, adults, and children from economic instability."*

UK: Tougher penalties are to be introduced for those who are a convicted of benefit fraud, including benefit bans

Following the enactment of the Welfare Reform Bill in 2012, the Department for Work and Pensions (UK) (DWP) will introduce a wide range of tougher powers to deal with welfare fraud. These powers are outlined in an HM Revenue & Customs (HMRC), and DWP (2010) report and will include the following:

- where DWP can prove criminal intent, it will aim to ensure that no fraudster escapes without receiving at least a tough minimum penalty. This means that DWP will no longer issue cautions. Such fraudsters will also be subject to *four weeks loss of benefit payments*
- for cases serious enough to merit prosecution DWP will, in discussions with the Ministry of Justice, look to invite the Sentencing Council to consider changing its guidelines with a view to magistrates and judges imposing stronger penalties in court
- for those convicted in court DWP and HMRC will also look to introduce new, tougher 'one strike' and 'two strike' regimes for imposing benefit deductions. DWP will look to impose a *loss of benefits of three months for a first conviction, and six months for a second*. DWP will also introduce a *third strike*, where those convicted of benefit fraud three times will have their benefits removed for at least *three years*
- for the most serious and aggravated cases of fraud – including those orchestrated by organised gangs – DWP will look at the possibility of applying a *benefit loss of at least three years following a single offence* (HM Revenue and Customs & Department for Work and Pensions, 2010).

The powers mentioned above are part of a new strategy to deal with welfare fraud. The strategy is based around five key elements: *Prevent, Detect, Correct, Punish* and *Deter***.** It is intended that the strategy builds on the government's welfare reforms (HM Revenue and Customs & Department for Work and Pensions 2010).

There have been critics of this approach. Barker & Lamble (2009) argue that:

- reducing or withdrawing benefits should not be used as a sanction for benefit fraud. A reduction or withdrawal of benefit should be made solely on the basis of financial status rather than as a sanction
- unless the underlying causes of benefit fraud are addressed, sanctions will be largely ineffective. Most 'fraud' cases involve small amounts of money and are committed by people for reasons of financial need, rather than greed
- withdrawing benefit is likely to exacerbate other poverty-related risks, such as losing accommodation, going without food, increasing stress and anxiety, declining health.

McKeever (2004) adds that there is a need to question whether the removal of social security is a proportionate and appropriate punishment.

Northern Ireland: Loss of Benefit Provision

The loss of benefit provision is designed to be a deterrent against the continued abuse of the benefit system by applying a benefit sanction against those who commit benefit fraud. The Social Security Fraud Act (Northern Ireland) 2001 and the Social Security (Loss of Benefit) Regulations (Northern Ireland) 2002 enable benefits to be withdrawn or reduced for a period of 13 weeks where a person is convicted of benefit fraud twice and the second offence was committed within five years of the date of conviction for the first offence.

The provision was extended by the Welfare Reform Act (Northern Ireland) 2010 to include provision for a new loss/reduction of benefit sanction of four weeks for a first offence of benefit fraud that results in a caution, administrative penalty or conviction.

The rationale for introducing the new provision was to strengthen the range of deterrents in place to discourage more people from committing benefit fraud in the first instance. It was argued that the existing loss of benefit provision only impacts on the small number of people who commit benefit fraud twice and are convicted of the offence in court. It has no impact on the significant number of people who commit benefit fraud once[6].

The existing 13-week loss of benefit sanction still applies to those who have been convicted of benefit fraud in two separate proceedings within a five year period (or three years if the whole of the second offence occurred before 1 April 2008).

Benefits can be withdrawn or reduced by 20 percent or 40 percent depending on an individual's circumstances, during the disqualification period (Social Security Agency, 2011).

What we don't know

Anti-fraud measures in welfare are under-researched especially in terms of 'what works' (Prenzler 2011). Prenzler (2011) argues that

> *"The delivery of social welfare payments and the prevention of fraud involves a difficult balancing act. This is between meeting obligations related to the protection of customers' privacy and the avoidance of additional hardship to customers through investigation while, at the same time, meeting a legal, ethical and financial duty to ensure that public money is directed towards genuine recipients*."

[6] See also Explanatory Memorandum to The Social Security (Loss of Benefit) (Amendment) Regulations (Northern Ireland) 2011 S.R. 2011 No. 291
www.legislation.gov.uk/nisr/2011/291/pdfs/nisrem_20110291_en.pdf

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