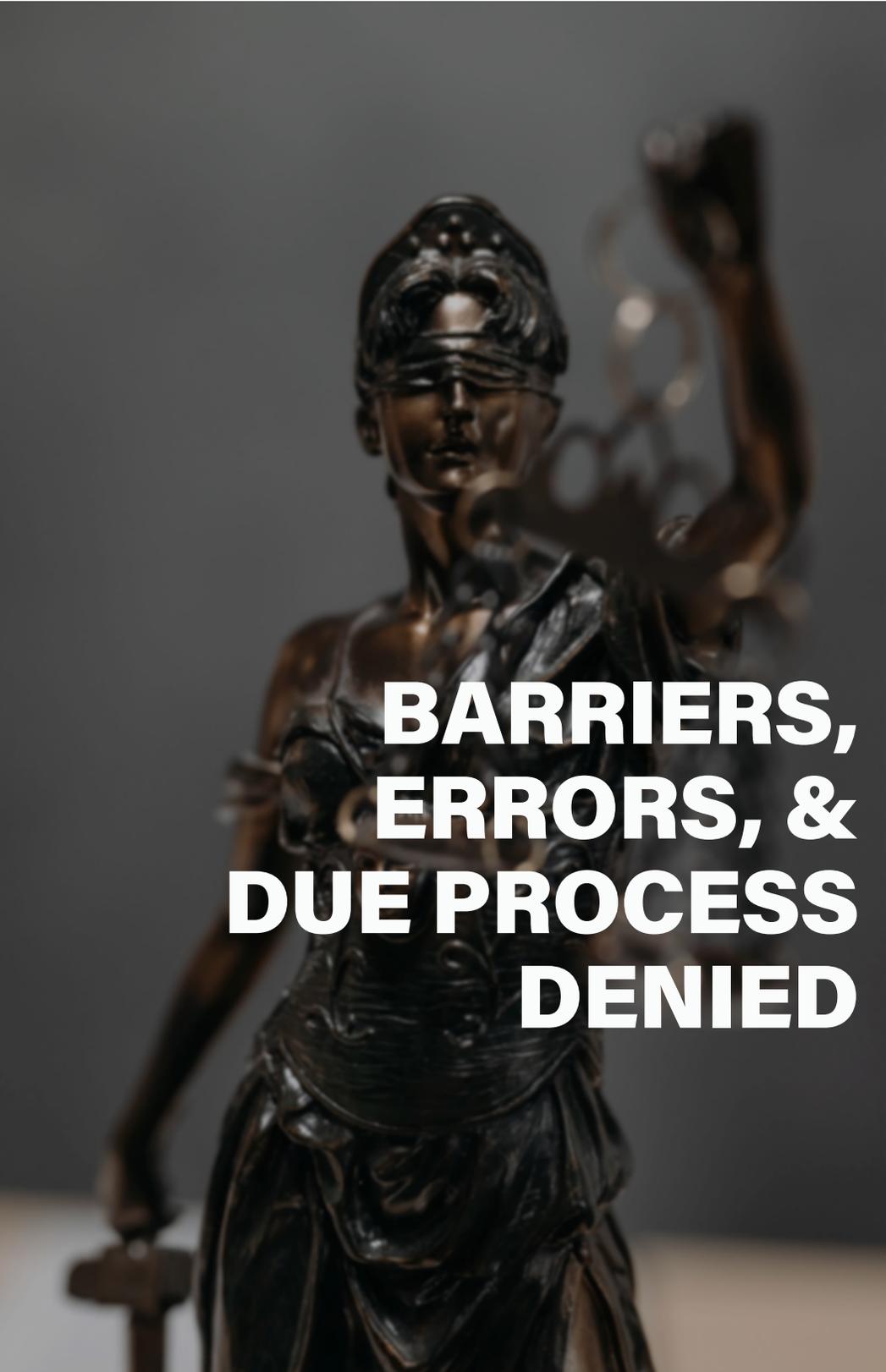




Colorado Center
on Law and Policy

A dark, metallic statue of Lady Justice, the personification of the law. She is blindfolded, holding a scale of justice in her left hand and a sword in her right. The statue is set against a dark, blurred background.

**BARRIERS,
ERRORS, &
DUE PROCESS
DENIED**

A Review of Colorado's
Supplemental Nutrition
Assistance Program
Administrative Hearing
Process

Colorado Center on Law and Policy staffers contributing to this report

Lyz Riley Sanders, co-author

Bethany Pray, co-author

Julia Char Gilbert, co-author

Charles Brennan

Ellen Giarratana

Karly Kaufman

Anthony Lux

Allison Neswood

© 2022 Colorado Center on Law and Policy

Published March 2022

About Colorado Center on Law and Policy

Colorado Center on Law and Policy is a non-profit advocacy organization dedicated to the vision that every Coloradan should have what they need to succeed. Standing with diverse communities, organizations, and individuals, we are but one piece of the rising movement to fight poverty across our state. We serve our fellow Coloradans using the powers of legal advocacy, legislative advocacy, coalition building, community engagement, research, and analysis.

We depend upon the generosity of individuals to continue our fight against poverty in Colorado. Visit CCLPonline.org/donate to support our work.

Colorado Center on Law and Policy

789 North Sherman Street, Suite 300

Denver, CO 80203

303.573.5669

CCLPonline.org

Table of contents

| | |
|---|----|
| Executive summary | 2 |
| Introduction | 3 |
| 1. Many disputes do not make it to a hearing | 9 |
| 2. Coloradans lose their cases at unusually high rates | 13 |
| 3. Widespread lack of legal representation is a major challenge for SNAP beneficiaries | 16 |
| 4. Hearing system is not set up to ensure beneficiaries' concerns are heard..... | 17 |
| 5. Colorado county errors among worst in nation | 19 |
| 6. Bureaucratic delays present grave risks..... | 22 |
| 7. SNAP recipients face large overpayments | 25 |
| 8. Due process is undermined in Colorado | 27 |
| Recommendations..... | 33 |
| Conclusion | 37 |
| Appendix: Methodology..... | 38 |
| Endnotes | 41 |

Acknowledgments

We wish to thank the many SNAP applicants and beneficiaries who contributed their time, stories, and insights to this research, without whom this report would not be possible.

Thanks, too, to CCLP's partners at All Families Deserve a Chance Coalition, Boulder Food Rescue, Center for Work Education Employment, Clayton Early Learning Center, Colorado Blueprint to End Hunger, Colorado Legal Services, Hunger Free Colorado, Metro Caring, and Summit Family & Intercultural Resource Center for distributing CCLP's survey to their constituents and for their tireless efforts to advance food security in Colorado.

Finally, thanks to Colorado Department of Human Services staff for their ongoing dedication to this work, and for their engagement and collaboration with CCLP and partners across the state.

Disclaimer

The recommendations made in this report are based on CCLP's research and analysis alone and do not necessarily reflect the opinions or recommendations of partner organizations.

Executive summary

The Supplemental Nutrition Assistance Program (SNAP) helps low-income households buy food, and for hundreds of thousands of Coloradans, it serves as a lifeline. SNAP has been proven to reduce food insecurity and poverty, improve health outcomes, lower health care costs, and provide a boost to local economies.

For SNAP to serve Coloradans effectively, the system for resolving disputes must be accessible and fair.

From October 2020 to February 2022, Colorado Center on Law and Policy (CCLP) conducted research on SNAP disputes and the processes and outcomes of the administrative hearing process in Colorado. CCLP staff combed through over two thousand pages of 2019 hearing decisions, analyzed state and federal data, and heard directly from Coloradans who experienced challenges with their SNAP benefits and the administrative hearing process firsthand.

CCLP found that many SNAP beneficiaries encounter problems but do not successfully access hearings, and when they do, lose their hearings at rates that are much higher than national averages. Beneficiaries reported difficulty navigating the appeal process, a finding that was unsurprising given the technical and dense information provided to beneficiaries in notices and on websites. Vanishingly few beneficiaries have legal representation, and some who had limited English proficiency appeared without the benefit of trained interpreters.

Many cases heard involved overpayments, some in the thousands or even tens of thousands of dollars. In Colorado, overpayments are much more likely to be caused by county error than by beneficiary error, but overpayments must be repaid even when the beneficiary is not at fault. CCLP also found that counties took months and sometimes years to investigate information, making it more difficult for beneficiaries to defend themselves in court, and sometimes resulting in higher overpayments.

The administrative legal processes, particularly those that involved allegations of fraud, did not appear to give beneficiaries a fair shake. Cases were brought long after the events in question, contributing to a high rate of non-appearance, and proof of the intent to defraud was typically based on minimal evidence.

CCLP recommends adjustments to state policy, changes to the process for hearings, and adoption of revised legal standards. State partners at the Colorado Department of Human Services and the Office of Administrative Courts, as well as the state legislature, have an opportunity to make changes in how counties operate and how administrative hearings are conducted that can ensure better outcomes for individuals.

A system that treats applicants and beneficiaries with greater fairness and respect can improve the outcomes for those individuals and make enrollment in SNAP more appealing to those who might qualify.

Introduction

The Supplemental Nutrition Assistance Program (SNAP) helps low-income households buy food. Recipients are provided money on a card that they can use like a debit card at the store. The benefits are paid for by the federal government, and Colorado Department of Human Services (CDHS) distributes the benefits to qualifying households through county human services offices. And for hundreds of thousands of Coloradans, it serves as a lifeline.

SNAP helped feed an average of 415,000 Coloradans across 208,000 households each month in Fiscal Year (FY) 2019.¹ Many of these households live in deep poverty. Eight out of ten (79%) SNAP beneficiaries in Colorado live at or below the Federal Poverty Level (\$25,750 a year for a family of four in 2019). And four out of ten (40%) live below 50% the Federal Poverty Level — just \$12,875 a year for a family of four in 2019.²

SNAP has many important benefits. The program has been proven to reduce food insecurity and poverty, improve health outcomes, lower health care costs, and provide a boost to local economies.³ SNAP is vital to the health and wellness of Coloradans and local communities.

In order for SNAP to serve Coloradans as effectively as possible, CDHS and counties must have systems in place that minimize errors and catch them promptly when they occur, and there must be fair and impartial processes in place to address disputes that arise. For example, sometimes an applicant believes they are wrongfully denied benefits, or a beneficiary believes their benefits have been inappropriately reduced or terminated. In other cases, the county believes a beneficiary made an error or deliberately misrepresented themselves on an application or recertification and seeks legal recourse. In some instances, the county erroneously provides the beneficiary with more benefits than the county believes the person was entitled to, so the beneficiary is instructed to return the “overpayment” to the state. Access to fair and impartial hearing processes ensures that people keep the food benefits they are entitled to and don't end up with overpayments that aren't justified.

Our research

Between October 2020 and February 2022, Colorado Center on Law and Policy (CCLP) conducted extensive research on the SNAP administrative hearing process in Colorado.

CCLP reviewed all Colorado SNAP administrative hearing cases for which a final decision issued in 2019, which it obtained through a Colorado Open Records Act (CORA) request submitted to the Colorado Department of Human Services (CDHS). Legal staff at CCLP compiled information on up to 40 elements for each case, including important dates, whether a beneficiary had legal representation, and the outcome of the case. In total, CCLP reviewed the details of 289 cases, which spanned 2,258 pages.

Additionally, CCLP analyzed SNAP Program Activity Statements for Colorado, program data which CDHS must prepare and submit to the federal Food and Nutrition Service (FNS) on a quarterly basis. CCLP also

analyzed data included in SNAP State Activity Reports published annually by FNS, which compile program data from all 50 states.⁴

Finally, in November and December of 2021, CCLP conducted online surveys and interviews with SNAP beneficiaries to better understand how the SNAP administrative hearing process functions in Colorado. Sixty-nine SNAP applicants and beneficiaries completed the survey, which was available in English and Spanish. CCLP conducted five follow-up interviews with survey respondents who indicated that they had disagreed with a decision that a county had made about their SNAP benefits.

CCLP found that there are numerous pressing issues with Colorado's SNAP administrative hearing process, from frequent errors and long delays on the part of the counties that administer SNAP to significant due process concerns. For low-income Coloradans, the consequences of these problems can be devastating.

This report summarizes key findings from CCLP's research and its recommendations for rectifying the most pressing problems in Colorado's SNAP administrative hearing process.

Food insecurity in Colorado

SNAP is a critical tool for combatting food insecurity, which remains a major problem in Colorado. One in ten Coloradans — some 520,000 people — experienced food insecurity in 2019.⁵

Due to many decades of exclusionary policies and laws, communities of color have faced greater challenges to accumulation of wealth through property ownership, job advancement, and educational advancement. As a result, rates of food insecurity are especially high among Coloradans of color. In 2019, 22.2% of Black Coloradans and 14.0% of Latinx Coloradans reported food insecurity, compared with 7.7% of non-Hispanic whites.⁶

Some regions of the state are harder hit, too. In rural areas, 12.0% of Coloradans reported experiencing food insecurity in 2019, compared with 9.3% of Coloradans in urban areas. Rates of food insecurity were as high as 19.1% in Pueblo County, 18.1% in Southeast Colorado, and 16.1% in Southwest Colorado.⁷

Throughout the COVID-19 pandemic, the challenge of food insecurity has been especially acute. Hunger Free Colorado estimated that 33% of Coloradans — and 43% of Coloradans of color — experienced food insecurity in April 2021.⁸

Key findings at a glance

1. **Many SNAP beneficiaries encounter administrative problems but few access hearings.** Two-thirds (67.0%) of Coloradans accused of intentionally violating program rules waived their right to a hearing in FY 2019, despite major consequences of doing so. Further, the vast majority of appealable actions were not appealed, and requests for hearings were frequently withdrawn.
2. **SNAP beneficiaries lose their cases at notably high rates in Colorado.** Just 7.8% of fair hearings went in favor of Colorado SNAP beneficiaries in FY 2019, compared with 41.4% nationally. Colorado SNAP beneficiaries were also less likely to prevail in their administrative disqualification hearings, compared with their national counterparts.
3. **Virtually all individuals in SNAP administrative hearings lack legal representation.** Approximately 95% appeared on their own, without legal representation.
4. **The system is not designed to hear SNAP beneficiaries' concerns.** Translation and interpretation services were not consistently available, and SNAP beneficiaries reported feeling unheard in interactions with county staff and judicial officials.
5. **Colorado's agency error rate is nearly the worst in the nation.** Two-thirds of all overpayment cases can be attributed to county agency errors, often subjecting SNAP beneficiaries to significant financial stress. Only three states have a higher proportion of agency errors than Colorado. In FY 2019, Colorado issued \$2.3 million in SNAP overpayments due to agency error.
6. **Colorado counties often delay taking action in SNAP cases, worsening problems for recipients.** Actions against beneficiaries were sometimes delayed by months or years, CCLP found, presenting problems for a population with high rates of housing instability, reducing beneficiaries' ability to participate and prevail in hearings, and making beneficiaries vulnerable to larger overpayment amounts.
7. **Errors and delays on the part of the county often place Coloradans on the hook for large overpayments.** CCLP reviewed cases in which counties' mistakes meant SNAP recipients were responsible for paying upwards of tens of thousands of dollars back to the state.
8. **Due process has been undermined in Colorado.** Significant administrative hurdles keep most Coloradans from pursuing their claims in state court. Administrative law judges appear to accept minimal evidence as sufficient proof that someone has committed an intentional program violation, despite federal standards indicating more proof is needed. And beneficiaries may face multiple hearings regarding the same set of facts, despite this burdening both the court system and the individuals involved.

Key terms

A few terms and concepts are important to know in order to understand the processes and problems discussed in this report.

First, SNAP hearings are conducted in **administrative court**.

Administrative courts deal with disputes about the actions of state agencies like the Colorado Department of Human Services (CDHS).

In the case of the SNAP program, where counties administer the program on behalf of the state, the disputes are between counties and individuals enrolled in the program. The administrative court system in Colorado is held in the Office of Administrative Courts (OAC). Administrative hearings are overseen by a judicial official called an **administrative law judge (ALJ)**, and there is no jury. Administrative court has different procedural rules than state or federal court, and it tends to be less formal. People who appear in administrative court are not entitled to representation by an attorney.

Second, there are two types of SNAP cases that show up in administrative court: **fair hearings** and **administrative disqualification hearings**.

Fair hearings encompass any time a SNAP beneficiary disagrees with a decision that the county has made about their benefits and files an appeal with the Office of Administrative Courts. Fair hearings are initiated by people who receive or who are trying to access SNAP benefits and who want to dispute — or **appeal** — a decision made by the agency. The person who files the appeal is called the **appellant**. Fair hearings include appeals of alleged overpayments and appeals of denials, reductions, and terminations of benefits.

Administrative Disqualification Hearings (ADH) are initiated by counties (rather than the individual) and concern allegations that a beneficiary had committed an “intentional program violation” or “IPV.” These hearings occur whenever a county alleges that a beneficiary has intentionally violated program rules by, for example, misreporting income, and seeks to prove the violation and have the beneficiary disqualified from the program. The beneficiary in these hearings is called a **respondent**.

An administrative disqualification hearing occurs unless the beneficiary agrees to give up their right to a hearing by signing a **waiver**. Under a waiver, the beneficiary gives up the opportunity for a hearing and agrees to be disqualified from the program for a year or more. The waiver may or may not include the beneficiary's acknowledgment that they intentionally violated program rules.

Counties may also refer to administrative disqualification hearings as **IPV hearings**. It is important to note that these administrative hearings are not criminal proceedings. However, counties may separately choose to refer a case to the county district attorney for criminal prosecution.

Third, **overpayments** occur when a SNAP beneficiary is issued more benefits than they were supposed to receive. Overpayments fall into three categories, depending on the cause of the overpayment:

An **Agency Error** occurs when a beneficiary is overpaid SNAP benefits because the county made a mistake in calculating income or failed to promptly consider income information that the beneficiary provided.

An **Inadvertent Household Error** occurs when an individual makes a mistake and unintentionally provides inaccurate information or omits relevant information, typically on an application or recertification for benefits.

An **Intentional Program Violation (IPV)** can result in an overpayment when an individual intentionally provides erroneous information with the purpose of obtaining or maintaining a level of benefits to which their household was not entitled. IPVs are sometimes referred to as fraud, but they are handled in administrative court, not criminal court.

Finally, if the state determines that an overpayment has occurred for any of the above reasons, it can take back — or **recoup** — the extra money from the beneficiary.

The **recoupment period** for agency error and inadvertent household error claims is currently limited to the value of benefits for the one year before the date the error is discovered. IPV claims can be much larger because counties can recoup for up to six years of overpayments. This means that the period of time that is used to determine how much is owed by a beneficiary who was overpaid is either one year or six years, depending on whether the cause is a mistake or an intentional violation. However, in 2019, the period examined in this analysis, state rules were different, and inadvertent household error claims could also result in recoupment for up to six years.

Key players

Government entities at the federal, state, and county levels are critical to the administration of SNAP and the resolution of any issues that arise.

Food and Nutrition Service (FNS) is an agency of the U.S. Department of Agriculture. The Food and Nutrition Service oversees the administration of federal nutrition assistance programs, including SNAP.

Colorado Department of Human Services (CDHS) is the state agency that oversees public assistance programs such as SNAP in Colorado. In many states, the state agency administers SNAP. In Colorado, county departments provide these services, under the supervision of CDHS.

County human services departments are responsible for administering SNAP in Colorado. Counties are responsible for processes such as determining if someone is eligible for SNAP, issuing benefits, investigating discrepancies, and sending notices to the SNAP recipients.

Office of Administrative Courts (OAC) holds administrative hearings in Colorado. When there is a dispute between a SNAP recipient and a county, the case is heard within the Office of Administrative Courts. Judicial officials called **administrative law judges (ALJs)** oversee these hearings and make an initial decision in the case.

Office of Appeals (OOA) is an independent office within CDHS. When a SNAP recipient files an appeal, their case first goes to the Office of Administrative Courts, where an administrative law judge makes an initial decision. Next, the Office of Appeals reviews the initial decision and issues a final decision, which may confirm, amend, or reverse the initial decision.

A note on public benefits & the constitutional right to due process

SNAP is a federal entitlement program. This means that all Coloradans who qualify under SNAP program rules have a legal right to receive SNAP benefits. As a result, SNAP beneficiaries are considered to have a property interest in their benefits and cannot have benefits reduced or denied without constitutional due process.

The right to constitutional due process was first outlined by the U.S. Supreme Court in *Goldberg v. Kelly* (1970). By finding that certain public benefits are property as defined in the Constitution, the majority in *Goldberg* found that beneficiaries are entitled to the protection of the Due Process Clause of the Fourteenth Amendment, which says states shall not “deprive any person of life, liberty, or property, without due process of law.” Based on *Goldberg* and later decisions, as well as the federal and state rules that followed, states must provide beneficiaries with advance notice and with hearings — where beneficiaries can present evidence, be heard orally, be represented, and cross-examine witnesses — before discontinuing or reducing their benefits.⁹

Finding #1

Many disputes do not make it to a hearing

This report focuses largely on cases that resulted in a hearing, but only a small fraction of Coloradans who experience administrative issues with their SNAP benefits ever end up at a hearing.

For SNAP beneficiaries facing an IPV allegation and possible disqualification, two-thirds end up waiving their rights to a hearing.¹⁰ And among SNAP beneficiaries who might benefit from appealing their case and accessing a fair hearing, the vast majority do not appeal, and many of those who do appeal later withdraw their request to appeal.

In other words, in Colorado, the vast majority of SNAP beneficiaries with administrative issues take pathways away from a hearing — and in forgoing a hearing, many leave behind benefits or significant sums of money that they otherwise would have been able to keep. The state and courts have no line of sight into the problems that these Coloradans — who number in the tens of thousands — may have encountered.

Rights to a hearing are frequently waived

When a SNAP beneficiary is accused of an intentional program violation (IPV), they must go to an administrative disqualification hearing (ADH), where an administrative law judge determines whether or not they committed an intentional program violation and should be disqualified from the program. That is, unless the person signs a document known as an ADH waiver, which forfeits their rights to a hearing. Signing an ADH waiver also causes the individual to lose their SNAP benefits and, in some cases, means they are on the hook for paying the state a substantial amount of money.

A startling proportion — 67.0% — of Colorado SNAP beneficiaries facing an ADH waived their rights to a hearing in FY 2019, despite the harsh consequences of doing so.¹¹

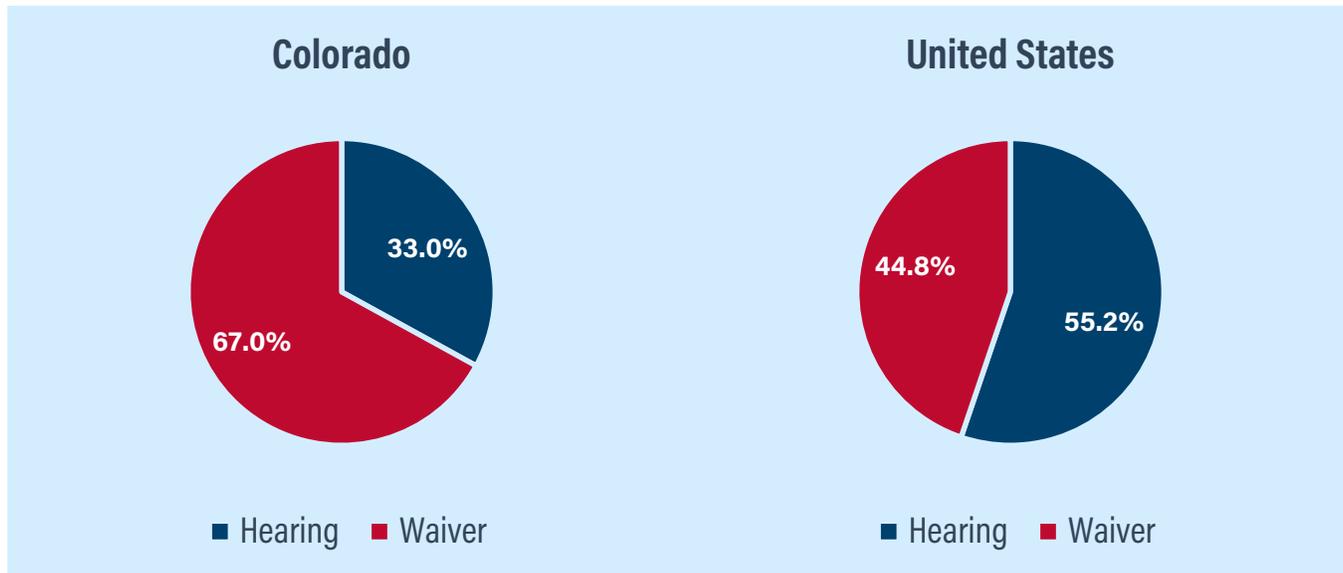
Colorado SNAP beneficiaries sign ADH waivers at significantly higher rates than the national average. Nationally, less than half of ADH referrals — 44.8% — resulted in waivers during FY 2019.¹²

The high number of waivers is especially concerning given that Coloradans are accused of intentional program violations at higher rates than the national average. According to federal data, Coloradans are nearly twice as likely to face an ADH than their national counterparts.¹³

There are a number of possible reasons someone might sign a waiver when charged with an IPV, including feeling pressured to do so, failure to understand their ability to challenge, or the perceived threat of criminal prosecution.

Further research is needed to understand and rectify the high rate of waivers in Colorado.

Figure 1. ADH cases resulting in hearings or waivers, Colorado & United States



SOURCE: FOOD AND NUTRITION SERVICE. *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE ACTIVITY REPORT: FISCAL YEAR 2019*

Small likelihood of appeal

Filing an appeal can be a good option for Coloradans who disagree with a decision the county has made about their SNAP eligibility or benefits and want the details of their case reviewed again. For example, someone might want to appeal if they feel they were unfairly denied benefits, if they feel their benefits were inappropriately lowered or terminated, or if they were told they needed to pay back an overpayment that they dispute.

But SNAP applicants and recipients only appeal in a small fraction of the instances where an appeal might be appropriate. Appealable actions like denials, reductions, and terminations are common and affect tens of thousands of Coloradans each year.

Approximately 65,000 applicants were denied SNAP benefits in Colorado in FY 2019, accounting for more than one in every four SNAP applications (26.4%).¹⁴

During that same period, about 39,000 Coloradans who attempted to renew their benefits through an annual process called “recertification” had their benefits reduced or terminated — about one in five (18.1%) of all recertifications.¹⁵

Overpayment cases are common as well: 7,516 Coloradans were told they needed to pay back an “overpayment” of SNAP benefits in FY 2019.¹⁶

But despite the large number of appealable actions, just 262 SNAP fair hearings were held in Colorado in FY 2019, according to federal data.¹⁷

There are a number of reasons someone may not appeal a decision they disagree with. Respondents to CCLP's survey reported not filing an appeal despite disagreeing with a decision about their benefits because they did not know what an appeal was, they did not realize that filing an appeal was an option for them, or they did not know how to begin the process. Lack of accessible information about the appeals process compounds the challenge of lack of legal representation, which is described in greater detail in Finding #3.

One interviewee told CCLP that she wanted to file an appeal after her benefits were denied but that she missed the deadline because she received the notice late and the county would not get back to her with information about how to proceed. She told CCLP, "I was calling and emailing them every day. 'What's my next step? What do I need to do?' And they wouldn't answer me... They ran me out of time."

Other respondents to CCLP's survey reported deciding against filing an appeal because they felt the process would be too burdensome, citing not being able to take time away from work or caregiving responsibilities, concerns that the process would be prohibitively expensive, lack of legal representation, and language access barriers for speakers of languages other than English.

Distrust or exasperation with the system also deters Coloradans from filing appeals. Two respondents to CCLP's survey reported that they decided against filing an appeal because they felt it was a poor use of their time, given the low likelihood of a ruling in their favor. One reported that she believed her SNAP benefits were wrongfully terminated but decided against filing an appeal because she "assumed it would be a lengthy process that would not be worth [her] time." The other described feeling that appealing an overpayment was not worthwhile because of the "time, effort, and energy it would take to go that route." Their impressions are well-founded: just 7.8% of fair hearings are decided in favor of the individual in Colorado, according to federal data.¹⁸

High rates of withdrawn requests for a hearing

Finally, of those individuals who are interested and able to request a fair hearing, over half later withdraw their request. According to CDHS Program Activity Statements, 262 fair hearings were held in FY 2019, and a striking 320 requests for fair hearings were withdrawn during that same time period. Put in simpler terms, for every 10 fair hearings that were held, 12 requests for a fair hearing were withdrawn.¹⁹

An appellant may withdraw their request for a hearing for a number of reasons, including realizing an appeal would not address their concerns with their case, having their concerns addressed before the hearing, determining the process is too lengthy or confusing to proceed with, or becoming disillusioned with the likelihood of having a favorable outcome. Further research is needed to understand Colorado's high rate of withdrawals.

The importance of accessing a hearing

While the current system often fails SNAP recipients, there are many examples of individuals for whom a hearing has resulted in a positive outcome. CCLP reviewed the cases of dozens of Coloradans, including

many without lawyers, who had decisions go in their favor in 2019. And while, as discussed in Finding #2, the rate at which SNAP beneficiaries win their cases in Colorado is significantly lower than the national average, access to a hearing made a difference for these individuals.

Going through the hearing process sometimes enables a beneficiary to keep their benefits. And in some cases, accessing a hearing reduces the amount that the beneficiary needs to pay by hundreds or thousands of dollars. CCLP reviewed four separate cases where the appellant was spared an overpayment between \$23,000 and \$34,000.

Given the large numbers of individuals who sign waivers, who do not appeal a decision they disagree with, and who withdraw requests for fair hearings, the cases reviewed by CCLP and discussed in this report tell just part of the story of the SNAP administrative hearing process in Colorado. The challenges that beneficiaries encounter prior to the hearing process warrant additional research and recommendations.

Case spotlight: Accessing a hearing saves \$26,000

Many cases reviewed by CCLP clearly illustrate the important function of the hearing process for Coloradans.

In one 2019 case, a Colorado beneficiary was facing an overpayment claim of over \$26,000. The county alleged that an adult who sporadically stayed at the house and occasionally helped out financially should have been listed as a household member but had not been. They were therefore pursuing the beneficiary for the amount that they had allegedly received in excess of what they were entitled to.

The beneficiary had legal representation and fought the case. The administrative law judge found that the evidence was not convincing that the adult had been living at the appellant's home throughout the alleged time period, and the overpayment claim was dismissed.

Had the appellant, like many others, decided not to appeal or been unable to appeal, they would have been required to pay back, either by financial contribution or taken in installments from SNAP benefits, \$26,000 — a staggering figure for anyone, and a particularly devastating amount for a low-income individual.

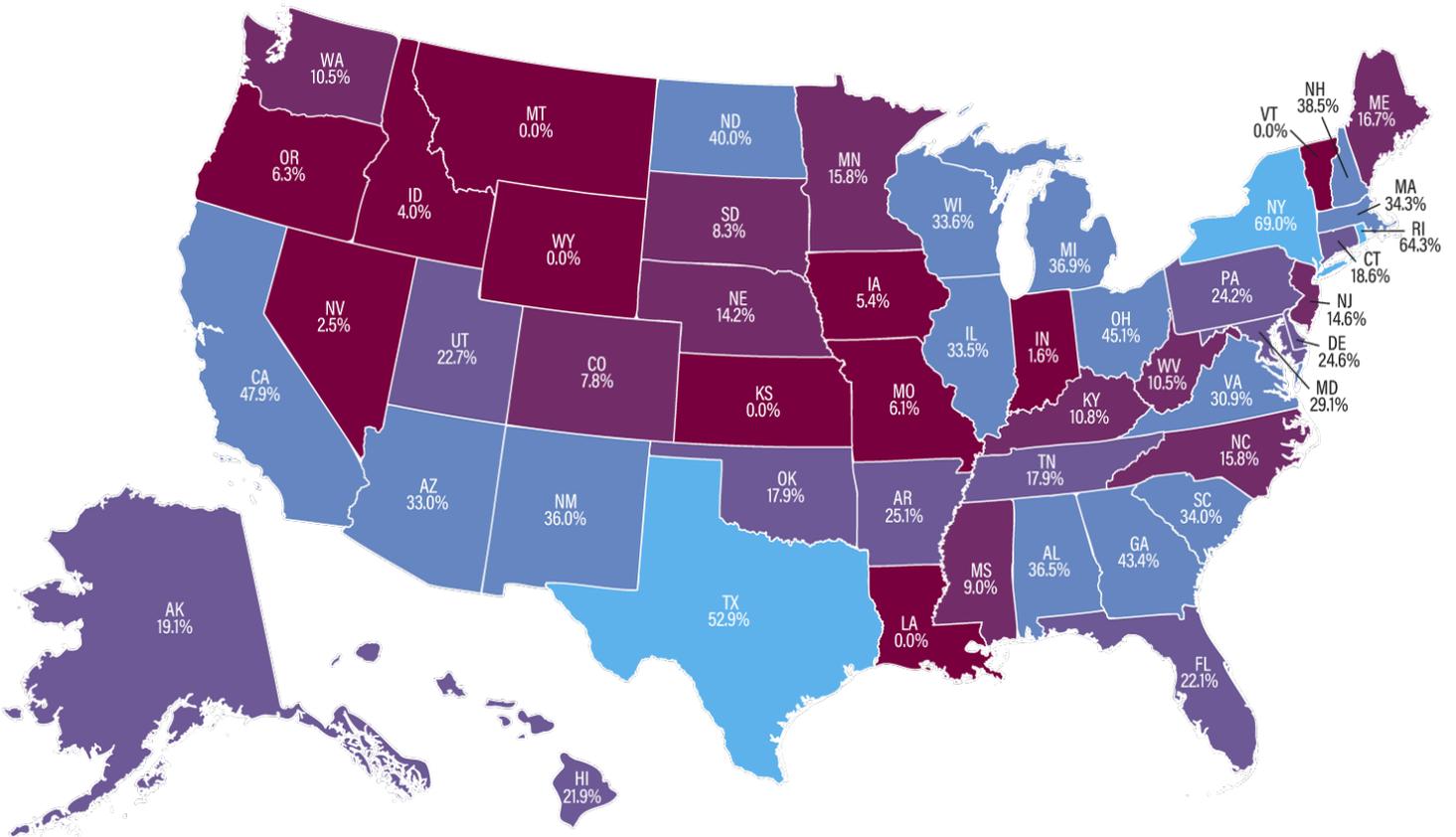
Finding #2

Coloradans lose their cases at unusually high rates

Of those SNAP beneficiaries who do make it to a hearing, their likelihood of having their case result in their favor is low: Beneficiaries lose their cases at notably high rates in Colorado. When an appellant loses a fair hearing, it typically means they are denied the benefits – or the level of benefits – they were seeking, or that they must pay the state the overpayment amount they were contesting. When a SNAP beneficiary loses an ADH, they lose their benefits for at least twelve months, and they are often subject to paying back the state for overpayments as well. In other words, the stakes are high.

Just 7.8% won their fair hearing cases in Colorado in FY 2019. In comparison, appellants won 41.4% of fair hearings cases nationally, according to federal data.²⁰

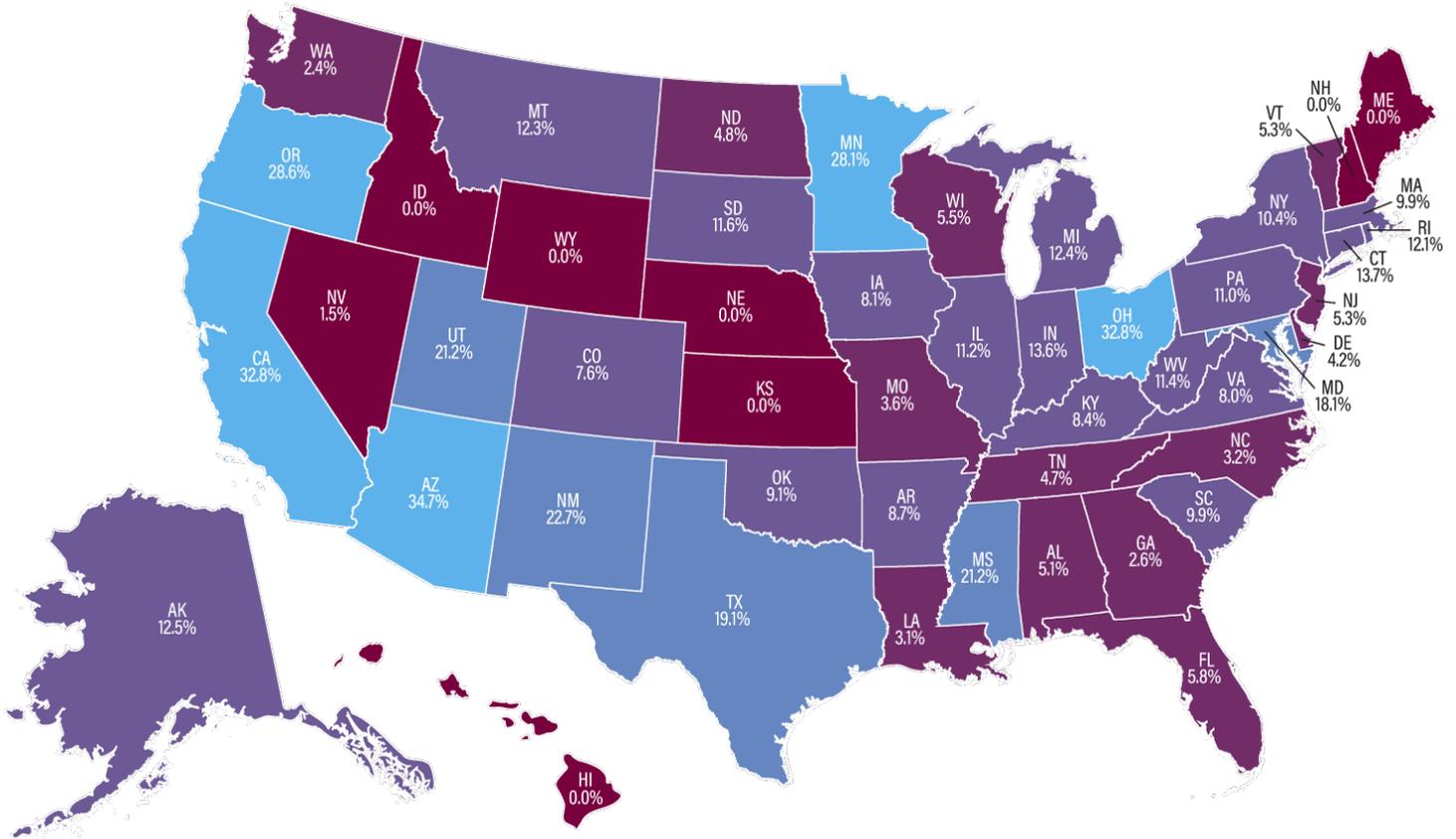
Map 1. Percent of fair hearings in favor of the beneficiary, FY 2019



SOURCE: FOOD AND NUTRITION SERVICE. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE ACTIVITY REPORT: FISCAL YEAR 2019

The rate at which Coloradans prevail in ADHs (7.6%) is also lower than the national rate (9.7%). In three states — Arizona, Ohio, and California — beneficiaries are over four times more likely to win their ADHs than beneficiaries in Colorado.²¹

Map 2. Percent of administrative disqualification hearings in favor of the beneficiary, FY 2019



SOURCE: FOOD AND NUTRITION SERVICE. *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE ACTIVITY REPORT: FISCAL YEAR 2019*

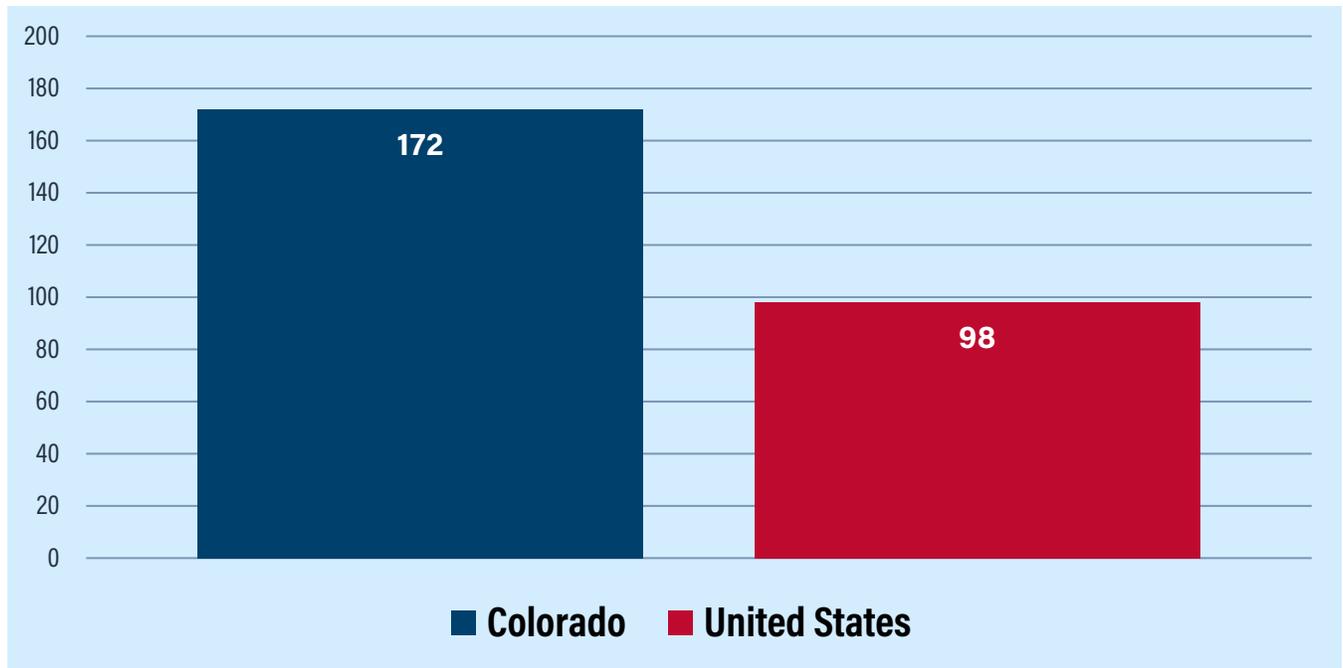
Signing an ADH waiver and losing one's ADH case both result in loss of benefits, and Colorado SNAP recipients sign waivers and lose their ADH cases at higher-than-average rates. As a result, the overwhelming majority of ADH cases in Colorado — 97.5% in FY 2019 — lead to the loss of benefits for Colorado SNAP beneficiaries, either due to a waiver or a lost ADH case.²²

The low rate at which Colorado beneficiaries prevail may be due, in part, to the widespread lack of legal representation (discussed in greater detail in Finding #3). However, more research is needed to understand why Colorado SNAP recipients fair so poorly in administrative court, relative to their counterparts in other states.

High rates of allegations compound consequences of low win-rates

The low likelihood of a Coloradan winning their ADH is especially concerning given that Coloradans are accused of intentional program violations at high rates. According to federal data, 716 cases in Colorado were referred for ADH in FY 2019, making Coloradans nearly twice as likely to face an ADH than their national counterparts.²³

Figure 2. Alleged intentional program violations per 100,000 monthly SNAP enrollees, Colorado & United States



SOURCE: FOOD AND NUTRITION SERVICE. *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE ACTIVITY REPORT: FISCAL YEAR 2019*



Finding #3

Widespread lack of legal representation is a major challenge for SNAP beneficiaries

In the vast majority of SNAP hearings reviewed by CCLP — a staggering 95% of cases — SNAP beneficiaries and applicants did not have legal representation. These cases are often referred to as *pro se* cases — cases in which the participant must represent themselves.

In the cases reviewed by CCLP, while the likelihood of the beneficiary prevailing was low across the board, beneficiaries who lacked legal representation won their cases at an even lower rate than those who had legal representation.

The lack of legal representation in administrative benefits cases is concerning in part because these cases are remarkably complex. The legal principles underlying administrative benefits cases are complicated, as are the SNAP rules. For example, the definitions of countable and exempt income are program-specific and idiosyncratic. And the way SNAP defines a “household” does not align with the definitions used by other programs such as Medicaid and regularly trips up people in non-traditional households. These complexities make it difficult for any beneficiary, and particularly *pro se* beneficiaries, to navigate their case successfully. For instance, CCLP found that beneficiaries are often unaware of rules that allow deductions from countable income, and that both counties and individuals struggle with how to accurately account for self-employment income.

There is limited data available on rates of legal representation in other states, but one 2005 study from Washington State found that 16% of appellants had representation at benefits-related administrative hearings.²⁴ While this amounts to just one in six cases, a 16% representation rate is still more than three times the rate of representation at SNAP hearings in Colorado in 2019.

It is clear that Colorado's underfunded legal services system can serve only a small fraction of the low-income Coloradans who face potential loss of benefits, overpayments, or disqualification from the program. Colorado Legal Services (CLS), the largest and only state-wide legal services provider, serves Coloradans who, with limited exceptions, have incomes below 125% of the Federal Poverty Level. In 2019, CLS had just 65 attorneys statewide to serve the 750,000 Coloradans who qualified for their services, and less than a fifth of CLS cases concerned public benefits and employment.²⁵ While a handful of other legal providers exist in the state, very few take public benefits cases, and just one non-CLS attorney represented a client in the 2019 cases CCLP reviewed.

Low-income Coloradans have a lot at stake in these cases — sometimes large sums of money and future access to benefits — and so the striking lack of legal representation is not without significant consequence.

Finding #4

Hearing system is not set up to ensure beneficiaries' concerns are heard

CCLP's research found that SNAP beneficiaries in Colorado do not reliably have translation and interpretation services they need to successfully navigate the SNAP administrative hearing process. SNAP beneficiaries also reported difficulty getting their questions answered and concerns addressed, and reported feeling disrespected in interactions with county staff and the courts.

Inadequate provision of interpretation and translation services

Language access was not consistently guaranteed for speakers of languages other than English navigating Colorado's administrative hearing process.

CCLP identified multiple instances in 2019 hearings where a family member or close friend acted as an interpreter. The policy of CDHS is that counties are responsible for providing interpretation at hearing, and it is not possible to determine whether beneficiaries were aware of the availability of free, qualified interpretation. Lack of access to qualified interpreters would violate Title VI of the Civil Rights Act, which bars discrimination on the basis of race, color and national origin. In hearings where accurate translation of legal terminology and rules is essential, the neighbor or family member that stands in as an interpreter is typically not qualified for that role.

CCLP's concerns about access to adequate interpretation and translation are well-founded. In 2019, the U.S. Department of Justice began an investigation of Colorado's Office of Administrative Courts, and in 2021, entered into a Memorandum of Agreement with Colorado to rectify precisely this type of language access problem, along with a rule change specific to workers compensation hearings.²⁶ That agreement applied to all hearings conducted by that office. Since then, the Office of Administrative Courts has translated forms for all types of administrative hearings, including SNAP, into eight additional languages and revised its practices regarding interpretation.

Access to translated materials and interpretation services is critical for many SNAP recipients in Colorado. In 2019, some 291,000 Coloradans had limited English proficiency.²⁷

CDHS does not report SNAP program activity data disaggregated by demographic characteristics such as primary language. The availability of such data would enable a more robust analysis of the ways in which the system is working — or not — for Coloradans whose primary language is not English.

Negative interactions with counties and courts

SNAP beneficiaries reported feeling unheard in dealings with county staff and during the hearing process. Several interviewees described it being difficult to get in touch with county staff, and that when they did connect, their questions and concerns were not always taken seriously or adequately addressed.

One interviewee recounted having been transferred repeatedly between staff members and departments. He told CCLP:

“It’s like everyone’s trying to pass the buck. I’d say, ‘I have this problem, I need help,’ and they say, ‘Okay, let me transfer you.’ And then someone random person would pick up, and often they’d say the same thing. Sometimes you get bounced back to the person you talked to in the first place. And it goes on like that until I give up, and I’m like, ‘You’re doing this because you don’t want to help me. You’re doing this until I get frustrated and hang up.’ They don’t make you feel important...”

“I know that social services can be a difficult task... I get it. That can really burn a person out. But... if the situation were reversed, I wouldn’t be trying to play ping pong with your questions.”

Another interviewee reported trying to inform the county that she was having problems with her cell phone and therefore could not always be reliably reached by phone. “[County staff] were just like, ‘When you get your issues figured out, call us back.’ And it’s like, I need help here. I’m begging for help here.”

A third interviewee described being treated disrespectfully both in conversations with county staff and at her SNAP hearing. Several exchanges with county staff left her feeling that her concerns went unheard. “You literally don’t care about me,” she said of the staff members. “You don’t care about people facing food insecurity.”

The interviewee then recounted being ignored at her hearing. She reported that the administrative law judge “directed everything towards the county” and talked about things “as if I wasn’t there.” When she finally asked permission to speak and described her situation, the judge told her, “This happens often, I see this all the time.”

“He said it so nonchalantly,” she added.

Low-income Coloradans work hard to support their families and put food on the table. They deserve food assistance that is administered with as few barriers as possible, and when obstacles do arise, they deserve a system and staff that hear their concerns and respond to them accordingly.

Finding #5

Colorado county errors among worst in nation

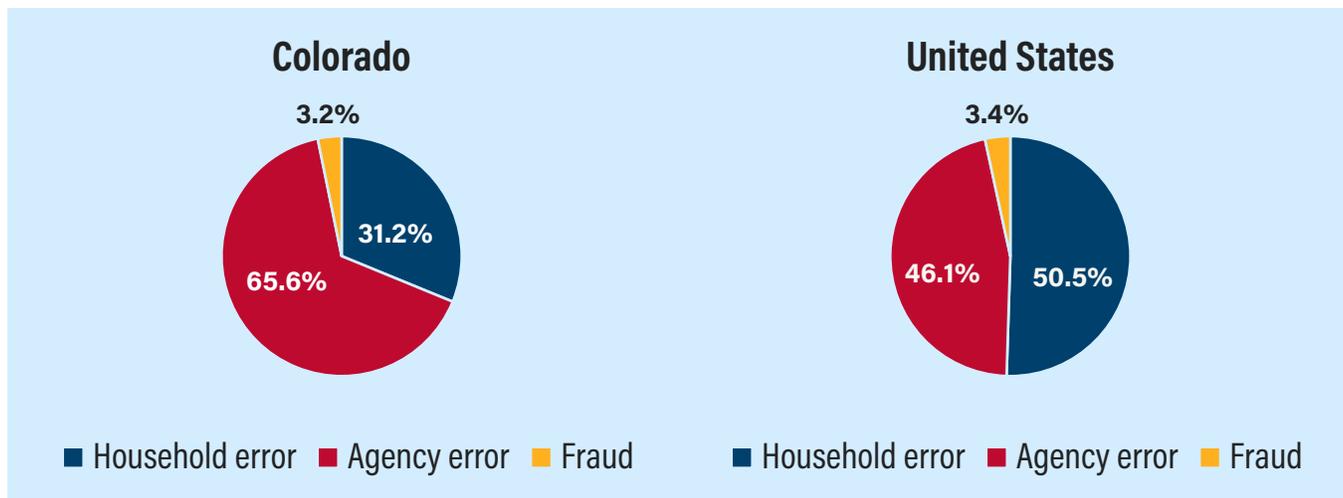
One category of overpayment is “agency error,” sometimes referred to as “administrative error.” In Colorado, such errors on the part of the county often lead to overpayments in the hundreds or thousands of dollars. The impact of agency error claims can be devastating for SNAP beneficiaries and former beneficiaries who must repay the county. While beneficiaries may justifiably feel that they should not be responsible for a debt when the agency has made the error, under federal rules, Colorado must pursue those overpayments.

CCLP identified cases where overpayments were the result of the county failing to process paperwork properly, recording income under the wrong month, recording weekly income as monthly income, and miscalculating the appropriate SNAP level, as well as technological “glitches” involving county and federal databases. In one 2019 case, the county found that they had failed to process two change report forms, resulting in \$3,033 in agency error overpayments.

These mistakes occur far too frequently in Colorado: agency error led to 4,932 households facing overpayment claims in FY 2019 alone.²⁸ Colorado's frequency of agency error is nearly worst in the nation.

In fact, agency error is the leading cause of overpayments in Colorado: in 2019, two-thirds (65.6%) of the overpayment cases in the state stemmed from agency error. Overpayments due to agency error occurred twice as frequently as those stemming from household errors (31.2% of all overpayment claims) and over 20 times more frequently than overpayments stemming from alleged fraud (3.2%).

Figure 3. Newly established SNAP beneficiary claims, Colorado and U.S., FY 2019



SOURCE: FOOD AND NUTRITION SERVICE. *SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE ACTIVITY REPORT: FISCAL YEAR 2019*

Just over \$2.3 million in agency-error overpayments were established in Colorado FY 2019.²⁹

Colorado had the fourth-worst proportion of agency error claims of any state in FY 2019, behind Alaska (74.7%), Kentucky (69.9%), and Connecticut (66.6%). On the other end of the spectrum, Oregon, Massachusetts, and Delaware reported the lowest proportions of agency error claims, with 3.4%, 4.7%, and 6.6%, respectively.³⁰

Only two states recorded higher numbers of agency error overpayments than Colorado in FY 2019: California, which has a population nearly seven times that of Colorado, and Kentucky.³¹

More research is needed on why administrative errors in Colorado are so prevalent. Colorado is unusual in that counties, rather than a centralized state agency, administer SNAP benefits — a structure that is associated with higher rates of errors.³² Additionally, funding for administrative functions is always in short supply.

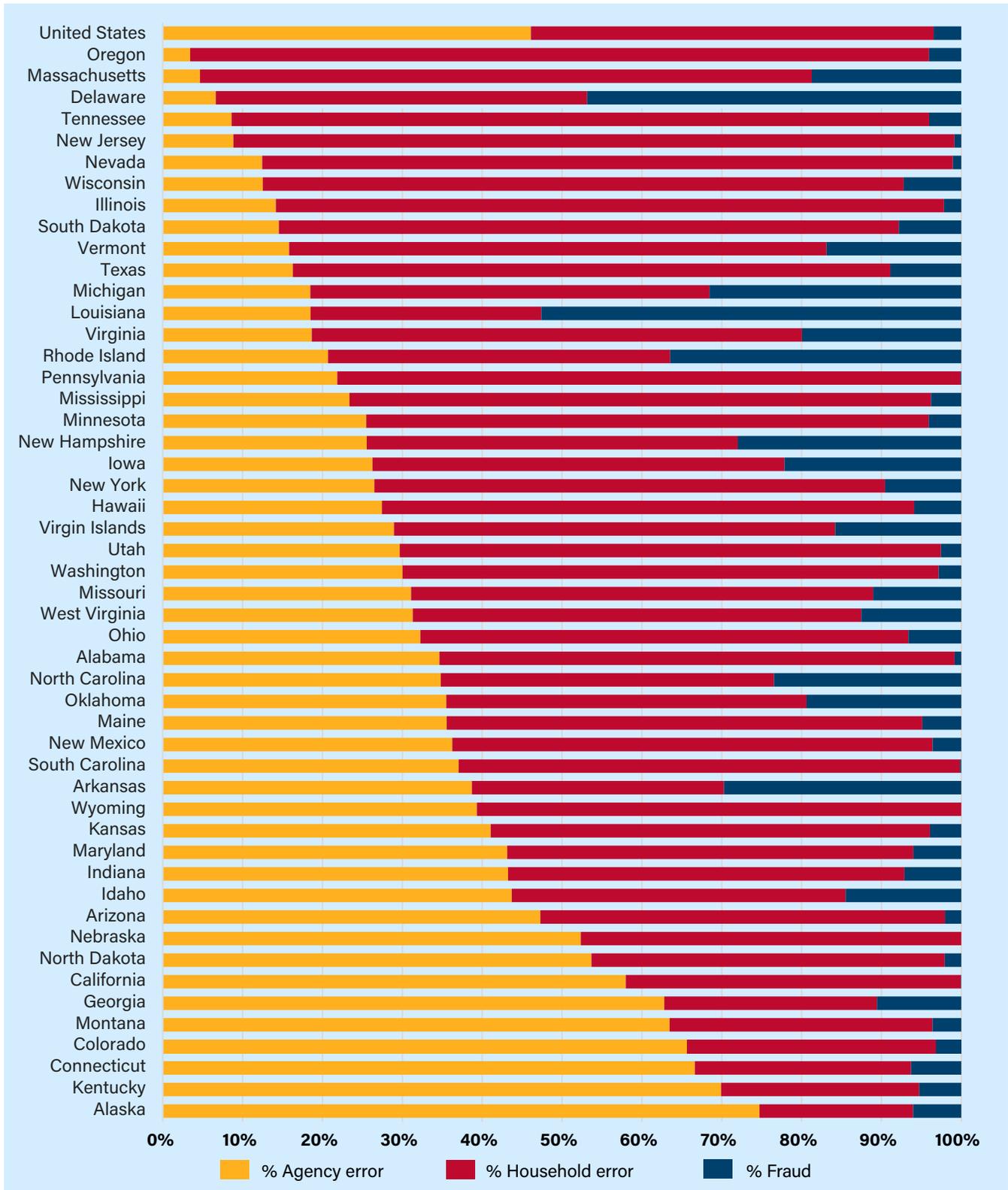
The size of overpayments and the impact of overpayment claims on Colorado families are described in greater detail in Finding #7.

Voices of SNAP beneficiaries

“I am a single mother, and getting on assistance has been necessary for me to provide for my family... Living in poverty is hard enough without having to jump through even more hoops just for my family to eat.”

“When I had an overpayment [due to agency error], it seemed unfair that I had to pay it back, seeing as though I was not the one who made any mistakes. The [repayment] happened over several months, but it took food out of my family’s mouth in our time of need.”

Figure 4. Overpayments due to agency error, household error, and fraud, by state



SOURCE: FOOD AND NUTRITION SERVICE. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM STATE ACTIVITY REPORT: FISCAL YEAR 2019

NOTES: 1. MISSING RECIPIENT CLAIMS ESTABLISHMENT DATA FOR THE GUAM AND FLORIDA. 2. DISTRICT OF COLUMBIA REPORTED 0 CLAIMS OF ANY SORT IN 2019.

Finding #6

Bureaucratic delays present grave risks

A critical piece of a well-functioning eligibility system is timely action on the part of the county when “discrepant information” becomes available. Discrepant information is information that is inconsistent with what the state had on file when determining eligibility. New information, whether provided by the beneficiary, an income database, or a third party, may suggest that an overpayment or IPV may have occurred, and it warrants action on the part of the county. As discussed below, federal rules set standards that states interpret in a range of ways, with Colorado's rules being particularly lenient about how long a county may take to act on that information. Unfortunately, undue delays sometimes result in larger overpayments and erode beneficiaries' right to due process.

Analyzing the extent of delays in Colorado is difficult, as hearing decisions do not, as a rule, contain key dates that could provide insight into the timeliness of county actions. The date that discrepant information became available to the county, the date that the type of claim and amount of a claim is established, and the date of notice are consistently missing from hearing decisions, CCLP found.

Despite the limited availability of information on delays in hearing decisions, CCLP examined the administrative law judge's findings of fact and identified many instances of long delays on the part of the county.

Long delays affect many SNAP recipients

For both IPV cases and overpayment cases, the time elapsed between the date discrepant information was available and the date the case was initiated varied widely — and in some instances, delays were years-long.

While in many cases, the county moved promptly to send beneficiaries important notices, CCLP identified over a dozen 2019 cases where over two years elapsed between the date discrepant information became available to the county and the date an IPV case was initiated. In one particularly egregious example, a county received a tip that a beneficiary had misrepresented her household income in May 2012. The following month, an investigator confirmed with the respondent that her living arrangements and income were not accurately reflected in her recertification paperwork. Then, without explanation, nearly seven years passed before the county sent a notice of the IPV allegation to the beneficiary. The respondent did not appear for the hearing, the initial and final decisions went in favor of the state, and the respondent was disqualified from both SNAP and cash assistance for 12 months.

In some cases reviewed by CCLP, delays on the part of the county in flagging and investigating errors significantly increased the size of the overpayment. In one instance, an individual called CDHS to report an increase in income that made them ineligible for benefits, but benefits continued for almost a year. The result was an overpayment amount of \$6,863. The problem of overpayments is discussed in greater detail in Finding #7.

Delays reduce ability to participate in hearing due to housing instability

Delays between when discrepant information becomes available and when notice of an overpayment or notice of an alleged IPV are sent is especially problematic because low-income Coloradans move frequently. As a result, long delays in finding errors, investigating them, and noticing beneficiaries will make it less likely that the notice will reach the recipient -- and the stakes are high.

SNAP recipients who have relocated and do not receive a notice of overpayment lose the opportunity to appeal, and those who fail to get notice of an alleged IPV lose the opportunity to defend against it. In this way, delays can reduce access to a just process for beneficiaries.

Relocation is common among Coloradans with low incomes. In 2019, 42% of Colorado renters with income under 100% of the Federal Poverty Level reported moving in the last 12 months.³³

Long delays, combined with frequent moves among SNAP participants, likely contribute to the abysmally low rates of participation in ADH proceedings: 88% of respondents failed to show for their ADHs in 2019, according to CCLP's analysis.

Long delays diminish SNAP beneficiaries' ability to defend themselves in a hearing

When the initiation of the overpayment action or ADH is delayed, the likelihood that the notice reaches the intended beneficiary goes down and the individual's ability to participate successfully in a hearing is diminished.

With the passage of time, people move, memories fade, and relevant evidence may be lost. Even if a person gets notice of the overpayment or IPV allegation many months later, it becomes increasingly unlikely that they will have retained documentation from the time in question regarding factors such as their medical or childcare expenses, work hours, shifting household composition, or other factors to adequately explain and defend themselves.

Federal rules require prompt action when investigating overpayments or other discrepancies. The clock for establishing claims starts ticking on a "date of discovery" that is defined in rule. The need for prompt action is similarly codified in statutes of limitation — laws that establish a maximum amount of time that a party has to initiate legal proceedings after an incident occurs. Statutes of limitation help ensure that findings against an individual are based on quality evidence and affirm that one should not remain permanently in jeopardy of civil or criminal prosecution.

The federal rule for SNAP says specifically that an agency must establish an overpayment claim by the end of the quarter following the quarter in which the overpayment was discovered — a period that would range from 91 to 180 days.³⁴ Unfortunately, states are permitted to interpret this requirement in a variety of ways.

Some states set a high standard. In New York, the “date of discovery” is the date the local district becomes aware that there is discrepant information that may affect the benefit amount of the case.³⁵ South Carolina's SNAP manual similarly says staff must establish a claim no later than six months from the date of detection of the possible claim.³⁶ Those definitions of when the clock starts ticking to establish a claim are similar to the language regarding fraud statutes of limitation. In Colorado civil proceedings concerning fraud, the statute of limitation clock starts when the party could have reasonably discovered the alleged fraud.³⁷

Colorado's way of defining the “date of discovery” in SNAP claims, however, allows counties virtually unlimited time for pursuing a claim. In Colorado, the timeliness of county investigations does not date from the point when the county received or became aware of discrepant information, such as the day the county received a call informing them that a household member had become employed. Instead, the state defines the “date of discovery” for claims as “the date that verification used to calculate the over-issuance is obtained,” meaning the date that the county received the documents it needed to figure out the amount of the overpayment.³⁸ This may be the date that the county receives a tax return or paystubs or gets confirmation from a landlord that a household member has left the household — and it may be days, months, or even years after the discrepant information was provided to the county.

Thus, a county that is aware of discrepant information but takes years to obtain verification “sufficient to calculate an overpayment” can be said to be adhering to state rules on timeliness of bringing claims. This state definition defeats the spirit of the federal requirement, leaves SNAP beneficiaries in jeopardy of being pursued for overpayments for unlimited periods of time, and reduces beneficiaries' ability to defend against claims.

The result of Colorado's permissive way of defining the “date of discovery” is that counties can and sometimes do wait years before acting on information they receive, and only then does the federal clock begin.

Case spotlight: After nearly six-year delay, notice could not reach the recipient

In 2013, a county determined that a SNAP recipient had failed to report their household income properly and had therefore received more benefits than they were entitled to. Nearly six years later, in 2019, the county sent a notice alleging an IPV to the last known address for the recipient. The notice was returned to the county, as the recipient had moved, and their forwarding address was unknown.

The state subsequently found that the recipient had committed an IPV and disqualified them from receiving benefits for a year. The years-long delay and subsequent inability to reach the recipient was not addressed in the administrative law judge's decisions.

Finding #7:

SNAP recipients face large overpayments

CCLP's review of 2019 SNAP hearings data found numerous instances where county errors and delays on the part of the county led to significant overpayments. And for many Coloradans, the overpayments they face are far beyond what they are reasonably able to pay.

Repayment of overpayments can happen in a number of ways. Current beneficiaries have their SNAP allotment reduced each month until the debit is paid, reducing their access to food; former beneficiaries must repay from their own typically very limited sources of income in a lump sum or through a payment plan, if the county will negotiate one. Counties can also intercept tax refunds or garnish wages to recoup those funds. Although states are permitted by federal rules to compromise claims when the beneficiary will be unable to repay within three years, meaning they can reduce or wipe out a claim altogether, the

Case spotlight: Long delay on \$16,000 overpayment claim

One beneficiary was sent a notice of overpayment in mid-2019, four years after the underlying investigation had been completed. The overpayment claims — for over \$16,000 — involved the years 2012 through 2015, and thus concerned events that had begun seven years earlier. No reason was given for the delay, other than a statement that the actions were part of a "backlog cleanup."

Neither the administrative law judge nor the Office of Appeals commented on these extraordinary delays in their decisions, which went in favor of the county.

hearing decisions demonstrate that counties failed to offer compromises on some very substantial claims related to agency or household error where evidence strongly suggested inability to pay the claim.³⁹

According to CCLP's analysis of SNAP hearings data, the median overpayment amount established in 2019 was \$1,741.⁴⁰ But even small overpayments create major hardships for families. According to a Federal Reserve report, nearly 4 in 10 of Americans in 2019 would not have been able to cover an unexpected \$400 expense without taking measures such as taking on credit card debt, borrowing from friends or families, or selling something — or would not be able to cover the expense at all.⁴¹

Overpayments in the 2019 decisions reviewed by CCLP consistently exceeded this amount, often by thousands or even tens of thousands of dollars. CCLP identified 36 overpayment cases in 2019 in which the court found that the SNAP recipient must repay the cost of overpaid benefits to the state, and in nearly all of those cases — 32 of the 36 — the established overpayment amount exceeded \$400. In 23 of the 36 cases — roughly two-thirds of the time — the overpayment amount exceeded \$1,000. One third of the time (12 of 36 cases), the overpayment amount exceeded \$5,000. And in five separate instances in 2019, a SNAP recipient was required to pay back over \$10,000 in overpayments.

In one case reviewed by CCLP, the court found that the individual needed to repay a staggering \$24,450 in benefits back to the state. For low-income households, the financial impact of these overpayment claims can be devastating.

The large overpayments that are currently commonplace in Colorado result in real harm to individuals and families receiving SNAP and may also impact SNAP enrollment rates. CCLP heard from interviewees that the frequency of overpayments and the high stakes of overpayments for low-income households may have a chilling effect on SNAP utilization.

One interviewee reported that overpayments happen so frequently that her friend does not spend all her benefits each month, “just in case the county makes a mistake” and she has to pay it back. She also described people being deterred from enrolling in SNAP altogether, after hearing stories of overpayment cases. She told CCLP:

“The amount of people who receive SNAP benefits is already low compared to the amount who qualify because people don’t want to apply because of the stigma or because they feel they’re taking it away from people who need it. And then for things like this to happen [overpayment cases], people are like, ‘You know what? Never mind. I’m already struggling. I’m not trying to deal with that.’”

The interviewee's impression about SNAP enrollment in Colorado is accurate: Only 60% of Coloradans eligible for SNAP were receiving SNAP benefits in 2017, according to Hunger Free Colorado, compared with a 73% enrollment rate nationally. This placed Colorado 43rd in the nation for SNAP enrollment.⁴² As the interviewee suggested, there may be a number of different factors contributing to Colorado's low enrollment rate — and fear of overpayments stemming from county error (agency error) should not be among them.

Voices of SNAP beneficiaries

CCLP spoke with a SNAP beneficiary who received overpayments for months due to an agency error. Reflecting on her experience, she told CCLP:

“This was not okay. How could you let it go on [for so long]? I did everything right. I did everything right. I was so scared I would go to jail. I’m a law-abiding citizen! I was so scared. For [the overpayments] to go on and on [without the county taking action], and I’m spending these benefits, and I come to find I need to pay it back. It’s not right.”

Finding #8:

Due process is undermined in Colorado

Due process requires that the state follow certain procedures before depriving someone of SNAP benefits or other entitlements. CCLP found that Coloradans' access to due process – the ability to be heard and to have their disputes regarding SNAP appropriately resolved – is eroded because of administrative hurdles and weaknesses in the legal process.

First, beneficiaries who complete the hearing process are almost always unable to go on to pursue their claims in state court because of unnecessary procedural hurdles. Second, for those facing IPV allegations and possible disqualification, administrative law judges appear to accept minimal evidence as sufficient proof of intent, despite fairly strict federal standards. And last, beneficiaries may face multiple hearings regarding the same set of facts, despite this burdening both the court system and the individuals involved.

Complexity of state administrative process prevents access to state court

Although participants who complete the administrative hearing process should be able to then access state court, hurdles in the hearing process prevent virtually all SNAP participants from doing so.

Unlike most states, Colorado has a multi-step administrative process. Appellants in fair hearings and respondents who have administrative disqualification hearings (ADHs) get an initial decision after their hearing. If they disagree, they may formally object to that decision, a process called “filing an exception.” The Office of Appeals within CDHS then considers the exceptions, if validly filed, and issues a final decision. In Colorado, only those beneficiaries who have properly filed exceptions may file a challenge to the final decision in state court.⁴³

However, the exceptions process is tricky, and few manage proper filing. Exceptions must go beyond “general dissatisfaction” with the decision and explain the specific “fact, rule or statute [an appellant or respondent] disagree[s] with and why.”⁴⁴ According to the information mailed to beneficiaries with the initial decision, the beneficiary is also required to arrange for a transcript of the hearing, which would be cost prohibitive in most cases, or demonstrate they are unable to pay and submit a recording of the hearing. A recording request requires that a beneficiary navigate through multiple pages on the Office of Administrative Courts website, fill out a separate form, and either figure out how to demonstrate they are unable to pay for a transcript or find a transcriptionist, since the Office of Administrative Courts does not provide that service. Since 2019, the exceptions process has gotten trickier still, with appellants required to also notify the Office of Appeals of their intent to file exceptions within 7 days of the date of the initial decision.

The process is not clearly explained, and neither the language in that notice, nor information on the CDHS Office of Appeals webpage, are written in plain language or readily available in languages other than English.⁴⁵

^ Filing exceptions

Exceptions

The OOA will notify the parties, including the CDHS program area, that they may challenge the Initial Decision by filing Exceptions. Exceptions are written objections which state your disagreement with the Administrative Law Judge's decision. The Notice of Initial Decision will provide a specific due date for filing Exceptions (15 days plus 3 days for mailing from the day listed on the Notice of Initial Decision Certificate of Mailing. If the due date delineated on the Notice of Initial Decision falls on a weekend or state holiday, the due date is moved to the next business day).

In your Exceptions, tell the OOA what specific fact, rule or statute you disagree with and why. (Be sure to include your name and case number.) Written briefs which merely state support or a general dissatisfaction will not be treated as Exceptions. The OOA cannot consider any dispute other than the issues raised in the appeal before the Administrative Law Judge. The OOA cannot consider new evidence, which with reasonable diligence could have been produced at the time of the hearing or review. The OOA cannot consider any challenge to the facts of your case unless a transcript is provided, however, if you requested a Record Review of a child abuse/neglect Trails Report, there was no hearing and thus, no transcript is available or required when challenging the Administrative Law Judge's factual determinations. The Exceptions must be in writing and be filed with the OOA by the due date contained on the Notice of Initial Decision unless the Office of Appeals grants a request for an extension of the due date for filing Exceptions. Any Exceptions received by the OOA after the due date for filing Exceptions will not be considered.

Exceptions can be filed by mail, by fax or be dropped off in person. This office recommends filing by fax and that you call to confirm that the fax was received. Any person hand delivering their Exceptions is advised that the OOA staff will only retrieve the document, staff cannot respond to questions about the appeal process unless the individual has a scheduled appointment.

If your filing is timely and constitutes Exceptions, the Office of Appeals will send the Exceptions to the other parties so they have an opportunity to respond to your arguments. Similarly, if the opposing party files Exceptions, you will have the opportunity to respond. The response must be filed in writing by the due date delineated on the Notice of Exceptions. Responses are to address only the issues raised in the opposing party's Exceptions. The OOA does not provide copies of responses to Exceptions. Answers to, or comments on, written responses are not permitted even if a party filing a response provides a courtesy copy of his/her response to the other parties.

Transcripts and audio recordings

This information does not apply to a Record Review of a child abuse/neglect Trails Report. In those cases no hearing was held and thus, there is no transcript or recording of a hearing.

EXCERPT OF THE "FILING EXCEPTIONS" SECTION OF THE "APPEAL A COUNTY DECISION" WEBPAGE ON THE CDHS WEBSITE. ACCESSED FEBRUARY 16, 2022.

Exceptions that are not timely or that do not include either a transcript or recording of the hearing are rejected. Exceptions where the appellant does not accurately identify a factual or legal issue are also subject to disqualification.

While exceptions may be viewed as an opportunity to emphasize an argument or correct underlying facts, they operate here as a bar to further review from both the Office of Appeals and state courts. Most states do not require that additional step prior to allowing access to state court, and instead allow the opportunity to appeal for all individuals who have gone to hearing.⁴⁶

CCLP's review found that the barriers to successfully filing an exception in Colorado are significant: Of the 289 cases reviewed by CCLP, just 19 people attempted to file an exception to the initial decision, and of those, only one was successful. Of the 18 attempts at filing an exception that were rejected, 16 were rejected because the individual did not correctly articulate the basis of their exception or did not provide a transcript or recording of the hearing. (The other two rejected cases were rejected because they were not submitted in a timely matter.)

Thus, in 2019, of the 289 cases provided to CCLP through the open records request, only one individual could have had access to state court.

Beneficiaries' inability to access state court is a violation of due process. It also contributes to the lack of court oversight of Colorado's SNAP program. Having court review is invaluable — it provides an opportunity to clarify ambiguities in state rules or resolve conflicts between state and federal law — but in Colorado it is rare that the state courts ever hear benefits cases.

Judicial review should be available for all beneficiaries who wish to contest agency decisions, but this avenue is particularly important because in Colorado, administrative law judges lack authority to challenge the legality or constitutionality of state SNAP rules.⁴⁷

Inadequate proof of intentional program violations

In order to successfully establish a claim against someone in court, the evidence against the person must meet a threshold called the “standard of proof.” The standard of proof describes the level of certainty needed in order to prove the facts that have been alleged, including whether someone is responsible for the alleged wrongdoing. Typically, cases with higher stakes require higher standards of proof.

For fair hearings — cases that involve decisions to reduce or terminate benefits, as well as challenges to overpayments — the burden is on the county to show by a “preponderance of the evidence” that the decision was correct. Under the “preponderance” standard, the burden of proof is met when the county convinces the court that there is a greater than 50% chance that the determination is correct or that the overpayment claim is true.⁴⁸

Administrative disqualification hearings cases are a different matter. In an ADH case where disqualification is a possible outcome, the stakes are particularly high. Under federal regulations, when an individual is proven to have committed an IPV, that person is disqualified from the program for a year, two years, or for life, depending on whether previous violations have been found.⁴⁹ If they have simultaneously received benefits from another state, they can be disqualified for ten years.⁵⁰ Because stakes are so high, the county must meet a higher burden of proof than it does for fair hearings. In addition, the county must prove intent on the part of the beneficiary, showing that the violation was willful or purposeful.

This higher burden of proof is called “clear and convincing.” The U.S. Supreme Court defined the term in *Colorado v. New Mexico*, a 1984 case involving a determination of water rights.⁵¹ In the 8-1 decision, the Court stated that the “clear and convincing” standard means “highly probable,” and that a finding could be made “only if the material it offered instantly tilted the evidentiary scales in the affirmative when weighed against the evidence [...] offered in opposition.”

Arguably the most important element of ADH cases is intent. Showing intent requires that evidence be provided about the state of mind of the beneficiary, and because of the higher burden of proof in these cases, that evidence needs to be strong. The questions for the court might be framed in the following way:

Is the material offered sufficient to “instantly tilt the evidentiary scales in the affirmative” when weighed against the evidence offered in opposition...

1. *...to show that misinformation was provided, or information withheld?*
2. *...to show that the person intended to provide that misinformation or withhold information?*
3. *...to show that the person did so with the intent to defraud the program?⁵²*

For the first two elements, on intentional provision of misinformation, courts in other states have demonstrated skepticism that merely signing a form or application satisfies the federal standard for intent. For instance, an Ohio court found that the signing of a lengthy form by a SNAP beneficiary “does not, without more, clearly and convincingly establish that she was aware of each and every time in the form of that she affirmatively, *intentionally* misrepresented to [the Meigs County Department of Human Services] via the form that her daughter was not employed” (emphasis in original).⁵³ Similarly, a Minnesota court found that a beneficiary's completion of a recertification report was not sufficient to prove intentional misrepresentation, given that the form was “unclear and confusing.”⁵⁴

Colorado's unified application forms for SNAP and other programs are lengthy and complex — the paper application is 16 pages long, many questions are technical, and most applicants do not get assistance when filling out the paper or electronic application. There are many reasons an individual may include or omit certain information. In particular, different benefit programs have different requirements that are difficult to keep straight. Some people may also have a language barrier that impacts their interpretation of what is required of them.

Nonetheless, the Colorado decisions show that administrative law judges frequently cite the decision to sign the application or recertification as the sole evidence of intent to provide misinformation, and in many cases, the beneficiary's signature was cited in a decision as the only evidence of intent. Many decisions included language such as: “[t]he fact that Respondent signed application(s) and/or forms with penalty warnings for providing false information shows . . . intent to commit an intentional program violation.” In one case, where the beneficiary was not present at the hearing, the administrative law judge asserted that the application was adequate proof of the beneficiary's state of mind, stating in the decision that by simply signing the application, the Respondent “acknowledged” duties to provide accurate information and “understood” how information in the application would be used. Collectively, “[t]he fact that Respondent signed application(s) and/or forms with penalty warnings for providing false information clearly showed [an] intent to commit an IPV.”

CCLP's review indicates that the Department upholds those decisions on virtually all occasions. In fact, all initial decisions of ADH cases reviewed by CCLP were upheld by the corresponding final decision.

Many Colorado 2019 SNAP decisions seemingly rely on presumption of intent, rather than requiring the counties to identify elements of the required standard of proof and introduce sufficient evidence to prove each element. As one administrative law judge wrote in a decision reviewed by CCLP, “a person is presumed to intend that which he or she does.” Presumptions, when made regarding intent, would tend to

undercut the requirement that the state meet its burden of showing intent by a preponderance of the evidence.

It is instructive that in *Sandstrom v. Montana*, a U.S. Supreme Court case about a similarly presumptive set of instructions to a jury about how to make a determination about intent in a criminal case, the Court found that such the instruction was unconstitutional.⁵⁵ In general, shortcuts should not be taken to lighten or remove the burden to prove intent.

CCLP also identified concerns about the use of hearsay evidence — statements made outside of court that are then offered as evidence, such as a neighbor or beneficiary giving an oral statement that is later presented at the administrative hearing by a casework or investigator. Courts have clarified that hearsay evidence may not be sufficiently reliable to meet the higher burden of proof that is required for an IPV. Such out-of-court statements are typically inadmissible at trial in federal and state court, as they prevent any opportunity to question the speaker in court.⁵⁶

Although hearsay evidence may be offered in administrative hearings like those conducted for SNAP, other states have found that the higher burden of proof (“clear and convincing”) cannot be met by hearsay alone.⁵⁷ Colorado allows reliance on hearsay alone if the evidence is sufficiently reliable and trustworthy.⁵⁸ But CCLP's review identified numerous instances where hearsay statements were found sufficient to show intent without any inquiry into what made that testimony reliable and trustworthy.

The practice of “proving” intentionality through just a signed application or an application and hearsay is a practice that might be improved on through CDHS policy-making. In addition, if more beneficiaries are able to successfully access state courts, these practices could be given the scrutiny they need.

Relitigation of the same facts

In Colorado, a SNAP beneficiary may face multiple actions based on a single set of facts, a practice that undermines the principles of judicial efficiency and fairness, and that is inconsistent with what is permitted in civil and criminal court.

For example, a Colorado beneficiary may first face an overpayment claim based on “inadvertent household error.” As described previously, inadvertent household errors occur when an individual makes a mistake that results in an overpayment. In inadvertent household error cases, there is no allegation of intent. After proceeding on that basis, a county is permitted to change the basis of its claim and pursue an intentional program violation based on the same facts, effectively changing their position to argue that the discrepancy was intentional. Because the 2020 rule change created different recoupment periods for inadvertent household error (IHE) claims, a person could now face three hearings: an IHE claim for a one-year period; an IPV allegation that results in an administrative disqualification hearing; and then an IPV overpayment claim for a six-year period.

This approach, which may take place over a period of years, is not only extremely burdensome for all parties. It also results in claims and issues being relitigated multiple times, with findings that may be in

conflict with one another. This practice violates several legal principles that our system prioritizes in other contexts:

1. First, this approach decreases judicial efficiency. Administrative law judges already have a high caseload and are expected to meet tight deadlines for SNAP cases, while maintaining other caseloads. Allowing for repeat cases on the same issue only exacerbates that problem.
2. Second, from a fairness perspective, this process deprives a beneficiary from adequately preparing a defense and has the potential to leave them in a precarious position. If, for example, their overpayment notice alleges an inadvertent household error, there may be things they share with the county or in a hearing that can later be used against them to pursue an IPV allegation and a disqualification hearing. Having claims pile up on one another may also leave a beneficiary confused about what the county is claiming they have done.
3. Third, this process allows the counties to make back-to-back claims based on the same set of facts. In the civil and criminal litigation context, courts would not allow a plaintiff or the prosecution to take multiple bites at the apple. Instead, they are required to bring any and every claim they may have against a defendant in one single case.⁵⁹ In SNAP administrative cases in Colorado, however, counties may pursue inadvertent household error, an IPV, and overpayment claims against one recipient based on the same set of circumstances, even when those claims contradict one another.

In CCLP's review of 2019 cases, 18 overpayment cases were pursued at hearing as inadvertent household error claims, but ten of those initial decisions contained discussions that implied fault on the part of the SNAP beneficiary. No clear finding was made by the judge regarding the basis of the claim. Instead of settling the matter for the beneficiary, each of those cases could potentially be followed by an administrative disqualification hearing based on an accusation of intentional program violation, even though the initial conclusion was that it was an inadvertent household error claim. In fact, one of those overpayment hearings was followed in 2019 by a second hearing, this time alleging an IPV. Today, because an IPV finding allows for recoupment of benefits received over a longer period of time, the beneficiary would also be subject to a third action, where the county could seek a much larger repayment than is available with cases of household error.

Recommendations

For Colorado's appeals process to be accessible and fair to the hundreds of beneficiaries involved in SNAP hearings, and for due process to be provided, CCLP recommends adjustments to state policy, changes to the process for hearings, and adoption of revised legal standards. The outcome of hearings can be devastating for those who face overpayments or IPV allegations, and most beneficiaries encounter these processes without benefit of counsel. A system that treats applicants and beneficiaries with greater fairness and respect will improve the outcomes for those individuals and make enrollment in SNAP more appealing to those who might qualify.

CCLP recommends the following steps to begin to address the most pressing issues with the SNAP administrative hearing process:

Recommendation #1

Improve resources and notices to beneficiaries

To make the hearing and appeal system more accessible to beneficiaries, the Office of Administrative Courts and the CDHS Office of Appeals should update websites, supporting links, and notices sent to beneficiaries. In particular, websites and notices should:

1. be written in plain language
2. be available in languages that are commonly spoken in Colorado
3. include step-by-step information on hearing processes
4. include clear information on access to interpretation and translation for non-English speakers and accommodations available to people with disabilities, and
5. include contact information for Colorado Legal Services or other legal providers.

The Administrative Procedures Act could also be updated to clearly state requirements for language access for all administrative hearings.

Recommendation #2

Increase funding for legal services providers

To reduce the number of beneficiaries who must represent themselves without the benefit of legal counsel, state and local governments should increase funding for legal services providers that can represent recipients of public benefits.

Recommendation #3

Expand training for administrative law judges

To improve beneficiaries' ability to engage meaningfully in hearings, the Office of Administrative Courts should ensure that administrative law judges receive expanded training on interaction with appellants and respondents without legal representation.

Recommendation #4

Refine processes to reduce county errors

To minimize preventable overpayment cases, CDHS should refine or expand processes to reduce county errors that lead to high rates of agency-error overpayments. CDHS should also consider policies that limit counties' ability to pursue those overpayments when long periods of time have elapsed since a county error occurred, as has been done in other states.

Recommendation #5

Ensure prompt investigations and require counties to establish the basis of claims at the outset

To reduce delays, CDHS should revise state rules to ensure that investigations begin promptly after agency is first received that raises the possibility that an overpayment may have occurred. Revisions should include redefinition of the “date of discovery” so that counties act promptly when discrepant information is available to them.

Prompt investigation would facilitate counties' ability to establish the basis of a claim at the outset. Requiring that counties establish whether a claim is the result of agency error, inadvertent household error, or an IPV will reduce the burden on the administrative hearing system and beneficiaries, while giving beneficiaries the information they need to more effectively challenge claims against them.⁶⁰

Recommendation #6

Ensure consistency and completeness in decisions

To allow for greater transparency into the hearing process and into administrative hearing decisions, CDHS and the Office of Administrative Courts should take steps to ensure the consistency and completeness of information included in decisions.

Decision formats should be standardized to allow for public access with minimal redaction. Decisions should also consistently include key dates in the case, such as:

1. the date discrepant information became available
2. the date an investigation was started
3. the date that claims were established
4. the date that a notice was sent to the beneficiary
5. the date that a beneficiary appealed, and the date that benefits were terminated, if applicable.

This information makes it possible to understand whether investigations into claims and IPVs were timely and whether decisions are made in a consistent fashion.

Information on the primary language of the beneficiary — and whether interpretation services were available — should also be consistently noted.

Recommendation #7

Establish a state database for hearing decisions

To further enhance transparency, CDHS should develop a timeline to establish a state database for hearing decisions. Several states provide such databases, giving beneficiaries and advocates a better view of how decisions are made.

Recommendation #8

Establish state policy on compromise of overpayment claims

To mitigate the harm caused by overpayments, CDHS should, in consultation with advocates and community partners, establish state policy on the compromise of overpayment claims.

States have discretion on how to treat such claims, and Colorado's approach should be uniform such that claims in different counties are assessed on specific measures and beneficiaries are treated equitably.

Recommendation #9

Remove barriers to state court

To provide reasonable access to state court, which is critical to ensuring due process, the Colorado Legislature should remove the requirement in the Administrative Procedures Act that a party file an exception in order to preserve that party's ability to appeal to state court.

In the meantime, CDHS should, through statutory or regulatory change, work to remove current transcript and recording requirements that hamper beneficiaries' ability to file exceptions.

Recommendation #10

Clarify in rule what is needed to prove intent in IPV

To ensure federal standards of proof are appropriately met, CDHS, or the Office of Administrative Courts in consultation with CDHS, should clarify in rule that signed applications and/or re-certifications alone are insufficient to show intent in IPV hearings, and that where hearsay is relied on, evidence must be provided to show that the hearsay is reliable and trustworthy.

Recommendation #11

Require by rule the opportunity to challenge waiver at hearing

To ensure that waivers are signed knowingly and willingly, CDHS or the Office of Administrative Courts should require by rule that beneficiaries have the opportunity to challenge the waiver at hearing if they are then faced with an IPV-related overpayment.

Rules should make clear that certain issues — such as failure to provide an interpreter — undermine voluntariness of the waiver.

Recommendation #12**Examine the guidance given to SNAP beneficiaries**

To ensure that beneficiaries receive appropriate protections prior to waiving their rights to a hearing, CDHS should examine what oversight or guidance SNAP beneficiaries currently receive prior to being presented with a waiver.

As part of this process, CDHS should conduct a review or audit of county materials and conduct member surveys and interviews. Beneficiaries should receive, at a minimum, clear information about their rights, such as the right to seek counsel, and the consequences of signing a waiver, such as the loss of benefits.

This information should be provided to the beneficiary in their primary language, which may require the use of professional translation or interpretation services.

Conclusion

CCLP's analysis revealed a range of problems in SNAP administrative hearings and claims processes. For beneficiaries, the consequences of those problems are dire. Under the current system, many households lose SNAP benefits but encounter obstacles to challenging those decisions through a hearing, and many Coloradans must pay significant sums of money back to the state, often due to no fault of their own. In this way, the flaws in the current system jeopardize the financial stability of many Colorado families — the very opposite of what the SNAP program and state partners intend.

However, the problems outlined in this report are not irreparable. By enacting the recommendations described, Colorado leaders can significantly improve the accuracy and timeliness of the SNAP program and ensure greater transparency, consistency, and fairness in the administrative hearing process. In so doing, they can move towards a Colorado where everyone has healthy food on the table, and where the administrative court system is more accessible and just.

Appendix:

Methodology

The research and analysis represented in this report were conducted by CCLP staff between 2020 and 2022. Methods included an analysis of all 2019 Colorado SNAP administrative hearing decisions; a review of program reports prepared by the Colorado Department of Human Services (CDHS) and the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture; and an online survey of and interviews with SNAP applicants and beneficiaries. Each of these methods is described in greater detail below.

Analysis of SNAP Administrative Hearing Decisions

In October 2020, CCLP staff submitted a Colorado Open Records Act (CORA) request to the Colorado Department of Human Services (CDHS) for all 2019 SNAP administrative hearing decisions. Federal law requires that such decisions be accessible to the public.⁶¹ Due to cost, CCLP narrowed its request and was not provided with the decisions that resulted from dismissals.

CCLP was provided with a set of decisions for all SNAP cases that had a final decision issued in 2019, a total of 289 cases, and was charged a total of \$2,445. CCLP received an additional four cases that did not pertain to SNAP; these cases were excluded from the analysis.

Each case consists of an initial decision written by the administrative law judge who presided over the hearing and typically includes a detailed description of the facts of the case, and a final decision written by the Office of Appeals for CDHS, which typically refers to the facts of the case in the initial decision and may provide extended discussion regarding the application of law. Cases were heavily redacted, a factor that made analysis more labor-intensive.

Legal staff at CCLP compiled information on up to 40 elements for each of the 289 cases, including important dates, legal representation, eligibility factors, the presence of an interpreter, and the outcome of cases.

Review of State and Federal Program Activity Data

CCLP received SNAP Program Activity Statements at no charge from the federal Food and Nutrition Service (FNS) as part of a July 2021 Freedom of Information Act request. CDHS must prepare and submit these statements to FNS on a quarterly basis.

The Program Activity Statements provided illuminating data on SNAP cases that did not go to hearing, such as fair hearing requests that were withdrawn and IPV allegations that resulted in a waiver. CCLP received and reviewed Program Activity Statements from Fiscal Year (FY) 2016, Quarter 1, to FY 2021, Quarter 1.

CCLP also reviewed annual SNAP State Activity Reports published by the Food and Nutrition Service, which compile data from all 50 states, the District of Columbia, the U.S. Virgin Islands, and Guam. These

reports allow for comparison of Colorado data with data from other states and with national averages. They are published annually and are available to the public. Data from the SNAP State Activity Report for FY 2019 are cited throughout this report.⁶²

Online Survey and Interviews with SNAP Applicants and Beneficiaries

In November and December 2021, CCLP conducted an online survey and interviews to better understand the lived experience of SNAP applicants and beneficiaries who navigate the administrative hearing process or who have an opportunity to appeal but do not move forward with a hearing. In November and December 2021, CCLP and its partners distributed an online survey for Colorado residents who had applied for or received SNAP benefits in the past five years. The survey was distributed in English and Spanish. Sixty-nine SNAP applicants and beneficiaries completed the survey. CCLP conducted five follow-up interviews with survey respondents who indicated that they had disagreed with a decision that a county had made about their SNAP benefits.

Limitations

Limitations with CCLP's analysis of 2019 SNAP hearing decisions include the following:

- As described in Finding #1, Coloradans facing intentional program violation allegations waive their rights to a hearing at high rates, and only a tiny fraction of SNAP applicants and recipients file appeals. As a result, the cases reviewed by CCLP and discussed in this report represent just a small subset of actions taken by counties against beneficiaries. Further research is needed to better understand and address the many obstacles to accessing a SNAP hearing in Colorado.
- The information provided in the findings of facts is not consistent across hearing decisions and is often incomplete. For example, findings of facts regularly failed to include the key dates, such as the date that discrepant information was discovered, the date an investigation was started, the date that claims were established, the dates that notices were sent to a beneficiary, the date that benefits were terminated, or the date that a beneficiary appealed. Without these dates, it is difficult, if not impossible, to understand whether cases were carried out in a timely way. Other factors, such as the presence or absence of interpretation services, were also not consistently noted.
- In hearings, parties on either side — both counties and beneficiaries — may submit supporting documents known as exhibits in support of their arguments. CCLP was not provided access to these exhibits, limiting CCLP staff's view of the full details of the case. Furthermore, in some instances, heavy redaction made the details of the cases difficult to interpret.

Endnotes

¹ *Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2019*. U.S. Department of Agriculture, Food and Nutrition Service. July 2021. <https://fns-prod.azureedge.net/sites/default/files/resource-files/FY19-state-activity-report.pdf>

² “2019 Poverty Guidelines.” Office of the Assistant Secretary for Planning and Evaluation. <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2019-poverty-guidelines>; *Colorado Supplemental Nutrition Assistance Program: Outreach Plan, Federal Fiscal Year 2022*. Division of Food & Energy Assistance, Colorado Office of Economic Security. <https://drive.google.com/file/d/1ga6brPgrubozfsQIMZajFDXIZIAvNGWN/view>

³ “Chart Book: SNAP Helps Struggling Families Put Food on the Table.” Center on Budget and Policy Priorities. November 7, 2019. <https://www.cbpp.org/research/food-assistance/chart-book-snap-helps-struggling-families-put-food-on-the-table>

⁴ *Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2019*. U.S. Department of Agriculture, Food and Nutrition Service. July 2021. <https://www.fns.usda.gov/pd/snap-state-activity-reports>; “SNAP Program Activity Statement. Fiscal Year 2019, Q1-Q4.” U.S. Department of Agriculture, Food and Nutrition Service. Provided to Colorado Center on Law and Policy following a Freedom of Information Act request in 2021.

⁵ Colorado Health Access Survey. “2019 Colorado Health Access Survey: Progress in Peril.” Colorado Health Institute. <https://www.coloradohealthinstitute.org/research/colorado-health-access-survey-2019>.

⁶ *Ibid.* Due to sample size limitations, data were not reported for Coloradans who identified as Asian, Native Hawaiian or other Pacific Islander, or American Indian or Alaska Native.

⁷ *Ibid.* Southeast Colorado refers to Health Statistics Region 6, which encompasses Crowley, Kiowa, Otero, Bent, Prowers, Huerfano, Las Animas, and Baca Counties. Southwest Colorado refers to Health Statistics Region 9, which encompasses Dolores, San Juan, Montezuma, La Plata, and Archuleta Counties.

⁸ “COVID Food Insecurity Survey.” Hunger Free Colorado. April 2021. Accessed January 6, 2022. <https://hungerfreecolorado.org/partner-with-us/initiatives/covid-food-insecurity-survey/>.

⁹ *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Matthews v. Eldridge*, 424 U.S. 319 (1976).

¹⁰ *Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2019*. U.S. Department of Agriculture, Food and Nutrition Service. July 2021. <https://fns-prod.azureedge.net/sites/default/files/resource-files/FY19-state-activity-report.pdf>

¹¹ *Ibid.*

¹² Ibid.

¹³ Ibid. Nationally, there were 98 cases referred for an ADH for every 100,000 people enrolled in SNAP electronic benefit transfer (EBT). In Colorado, there were 172 cases referred for an ADH for every 100,000 people enrolled in SNAP EBT.

¹⁴ “SNAP Program Activity Statement, Fiscal Year 2019, Q1-Q4.” U.S. Department of Agriculture, Food and Nutrition Service. Provided to Colorado Center on Law and Policy following a Freedom of Information Act request in 2021.

¹⁵ Ibid.

¹⁶ *Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2019*. U.S. Department of Agriculture, Food and Nutrition Service. July 2021. <https://fns-prod.azureedge.net/sites/default/files/resource-files/FY19-state-activity-report.pdf>

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ “SNAP Program Activity Statement, Fiscal Year 2019, Q1-Q4.” U.S. Department of Agriculture, Food and Nutrition Service. Provided to Colorado Center on Law and Policy following a Freedom of Information Act request in 2021.

²⁰ *Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2019*. U.S. Department of Agriculture, Food and Nutrition Service. July 2021. <https://fns-prod.azureedge.net/sites/default/files/resource-files/FY19-state-activity-report.pdf>.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Brodoff, L. “Lifting Burdens: Proof, Social Justice, and Public Assistance Administrative Hearings.” 2010. *Journal of the National Association Administration Law Judiciary* 30(2):601. <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1018&context=faculty>

²⁵ “Leadership When it Matters Most: 2019-2020 Highlights.” Legal Aid Foundation of Colorado. <https://www.legalaidfoundation.org/wp-content/uploads/LAF-Annual-Highlights-Donors.pdf>

²⁶ “Justice Department Settles Investigation into Language Barriers in the Colorado Administrative Court System.” Department of Justice, Office of Public Affairs. March 22, 2021. <https://www.justice.gov/opa/pr/justice-department-settles-investigation-language-barriers-colorado-administrative-court>

²⁷ U.S. Census Bureau, American Community Survey. 2019 1-Year Estimates. B06007.

²⁸ *Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2019*. U.S. Department of Agriculture, Food and Nutrition Service. July 2021. <https://fns-prod.azureedge.net/sites/default/files/resource-files/FY19-state-activity-report.pdf>

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² *Ten Degrees of Decentralization: Overview of SNAP Operations in County Administered States*. Center for Law and Social Policy. April 2018. <https://www.clasp.org/sites/default/files/Ten%20Degrees%20of%20Decentralization%20-%20CAS%20Narrative%20Report%202018.pdf>

³³ U.S. Census Bureau, American Community Survey. 2019 1-Year Estimates.

³⁴ 7 C.F.R. 273.18(d) (2011).

³⁵ *Supplemental Nutrition Assistance Program (SNAP) Source Book*. New York State Office of Temporary and Disability Assistance, Center for Employment and Economic Supports. July 20, 2011. <https://otda.ny.gov/programs/snap/SNAPSB.pdf>

³⁶ *SNAP/TANF Program: Benefit Integrity Manual*. Vol. 9. April 2021. South Carolina Department of Social Services. https://dss.sc.gov/media/2708/benefit_integrity_manual_vol_9-april2021.pdf

³⁷ C.R.S. 13-80-101 (2016); C.R.S. 13-80-102 (2016); C.R.S. 13-80-103 (2016).

³⁸ 10 C.C.R. 2506-1 4.801.2.B.2.

³⁹ 7 C.F.R. § 273.18(e)(7) (2011); 7 C.F.R. § 273.18(e)(8) (2011).

⁴⁰ This figure represents the median established overpayment amount for the cases for which a nonzero overpayment amount was established, based on 2019 cases reviewed by CCLP. It does not include cases for which a nonzero overpayment amount was alleged but not established.

⁴¹ *Dealing with Unexpected Expenses: Report on the Economic Well-Being of U.S. Households in 2019*. Board of Governors of the Federal Reserve System. May 2020. <https://www.federalreserve.gov/publications/2020-economic-well-being-of-us-households-in-2019-dealing-with-unexpected-expenses.htm>

⁴² “Food Stamp Administration Has Improved in Colorado, but Opportunity for Progress Remains.” Hunger Free Colorado. March 27, 2019. <https://hungerfreecolorado.org/food-stamp-administration-has-improved-in-colorado-but-opportunity-for-progress-remains/> *As of this writing, 2017 was the most recent year for which these data were available.*

⁴³ C.R.S. 24-4-105(14)(c) (2016). “Failure to file the exceptions... shall result in a waiver of the right to judicial review of the final order of such agency...”

⁴⁴ “Appeal a County Decision.” Colorado Department of Human Services, Office of Appeals. Accessed February 14, 2022. <https://cdhs.colorado.gov/our-partners/counties/appeal-a-county-decision>

⁴⁵ *Ibid.*

⁴⁶ “After The Hearing Decision.” Office of Legal Counsel, Regulations and Administrative Hearings, Connecticut Department of Health and Human Services. <https://portal.ct.gov/DSS/The-Office-of-Legal-Counsel-Regulations-and-Administrative-Hearings/Office-of-Legal-Counsel-Regulations-and-Administrative-Hearings---OLCRAH/After-The-Hearing-Decision>; “Administrative Hearing Rules.” Department of Licensing and Regulatory Affairs, Michigan Administrative Hearing System. Effective January 15, 2015. https://www.michigan.gov/documents/lara/1297_2013-100LR_AdminCode_480657_7.pdf.

⁴⁷ 10 C.C.R. 2506-1 4.802.63.C.2.

⁴⁸ *Swain v. Motor Vehicle Division*, 717 P.2d 507 (Colo. App. 1985).

⁴⁹ 7 C.F.R. § 273.16(b)(1) (2011).

⁵⁰ 7 C.F.R. § 273.16(b)(5) (2011).

⁵¹ *Colorado v. New Mexico*, 459 U.S. 176 (1982); *Colorado v. New Mexico* 467 U.S. 310 (1984).

⁵² 7 C.F.R. 273.16(c) (2011); C.R.S. 26-2-305(1)(a) (2021).

⁵³ *Forester v. Ohio Dept. of Human Services*, 122 Ohio App. 3d 750, 702 N.E.2d 959 (Ohio Ct. App. 1997).

⁵⁴ *Hazelton v. Commissioner of Department of Human Services*, 612 N.W.2d 468, 471 (Minn. Ct. App. 2000).

⁵⁵ *Sandstrom v. Montana*, 442 U.S. 510 (1979).

⁵⁶ Colo. R. Evid. 801. “Hearsay’ is a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”

⁵⁷ See, e.g., *Benke v. Neenan*, 658 P.2d 860, 862 (Colo. 1983) (noting that rules of evidence are relaxed in teacher dismissal cases, in which the standard of proof is preponderance of the evidence, but relying solely on hearsay evidence is not enough); *Radiology Prof. Corp. v. Trinidad Area Health*, 39 Colo. App. 183, 184, 562 P.2d 1123, 1124 (Colo. App. 1978) (holding that an unemployment compensation award “cannot stand” when the “sole proof” provided was hearsay evidence); *Johnson v. Dep’t of Health & Rehab. Servs.*, 546 So. 2d 741, 742–43 (Fla. Dist. Ct. App. 1989); *Juste v. Dep’t of Health & Rehab. Servs.*, 520 So. 2d 69, 72 (Fla. Dist. Ct. App. 1988).

⁵⁸ *Colorado Dept. of Revenue v. Kirke*, 743 P.2d 16, 21 (1987).

⁵⁹ In Colorado, these concepts of issue and claim preclusion are applicable in the administrative context. See *Dale v. Guar. Nat. Ins. Co.*, 948 P.2d 545, 549 (Colo. 1997) (claim preclusion); *Indus. Comm’n of State v. Moffat Cnty. Sch. Dist. RE No. 1*, 732 P.2d 616, 620 (Colo. 1987) (issue preclusion).

⁶⁰ 7 C.F.R. § 273.18

⁶¹ 45 C.F.R. 205.10(a)(19) (1992).

⁶² Supplemental Nutrition Assistance Program State Activity Report, Fiscal Year 2019. U.S. Department of Agriculture, Food and Nutrition Service. July 2021. <https://fns-prod.azureedge.net/sites/default/files/resource-files/FY19-state-activity-report.pdf>; “SNAP Program Activity Statement. Fiscal Year 2019, Q1-Q4.” U.S. Department of Agriculture, Food and Nutrition Service. Provided to Colorado Center on Law and Policy following a Freedom of Information Act request in 2021.

CCLP

Colorado Center
on Law and Policy

STANDING WITH DIVERSE COMMUNITIES AGAINST POVERTY