



Drug Testing SNAP Applicants is Ineffective and Perpetuates Stereotypes

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Drug Testing and SNAP

Several states have proposed to drug test applicants seeking nutritional assistance under the federal Supplemental Nutrition Assistance Program (SNAP). This stigmatizing proposal is based on stereotypes about people who need SNAP benefits and would undermine the program’s key purpose of ensuring that families and individuals can maintain an adequate diet. Courts have ruled in a number of cases that suspicion-less drug testing of applicants or recipients of public assistance is unconstitutional. Under the federal Temporary Assistance for Needy Families (TANF) block grant, states have a great deal of flexibility in setting eligibility rules for cash assistance and may require drug tests when there is a basis for suspicion. However, under SNAP regulations, states are not permitted to create additional conditions for eligibility, and drug testing is only allowed under very limited circumstances. Despite this, some states have expressed interest in expanding these circumstances and H.R. 2179, which was introduced in the U.S. House in April of this year, would require drug tests for SNAP, TANF, and applicants who apply for rental assistance under Section 8 of the federal Housing Act.¹ States that have implemented drug testing for TANF have found the process to be costly and ineffective at identifying people in need of treatment; this makes drug testing a poor policy for any public benefits.

Suspicion-less Drug Testing is Unconstitutional

While several states have attempted to implement suspicious-less testing in TANF, it has repeatedly been found an unconstitutional violation of the Fourth Amendment prohibition against unreasonable search and seizure. The courts have indicated that simply receiving public assistance is not a basis for suspicion of drug use and the state must have some reason to believe that a *particular* individual may be using drugs. In 2014, the U.S. Eleventh Circuit Court of Appeals held that Florida’s drug testing law violated the Fourth Amendment for its “unreasonable search of applicants without evidence of a more prevalent, unique, or different drug problem among TANF applicants than in the general population.” Additionally, the court affirmed that the state failed to meet its burden of establishing a “substantial special need to drug test all TANF applicants without any suspicion.”²

Drug Testing for SNAP Eligibility is Permitted Only under Limited Circumstances

SNAP is administered by states, subject to federal rules ensuring that nutritional assistance is available to all qualifying individuals, regardless of the state in which they live. The United States Department of Agriculture (USDA) has not permitted states to use drug testing as a factor in determining eligibility for SNAP. When denying states the authority to drug test SNAP applicants, USDA has cited a provision that “no plan of operation submitted by a State agency shall be approved unless the standards of eligibility meet those established by the Secretary, *and no State agency shall impose any other standards of eligibility as a condition for participating in the program*”.³

Drug testing for SNAP has been allowed under only two circumstances. The first instance is that in some states, people convicted of drug felonies can only be eligible for SNAP benefits if they submit to a drug test. As of 2017, this modified ban is in place in four states, Kansas, Minnesota, Missouri, and Wisconsin. The second instance is that people who are disqualified from TANF (or another means-tested program) for failing a drug test or not participating in a required one may be disqualified from SNAP as well.⁴ However, this “comparable disqualification policy” only applies to ongoing SNAP cases, and not to new applicants, therefore the USDA’s Food and Nutrition Services (FNS) has ruled “TANF disqualifications will not, in and of itself, disqualify an applicant to the SNAP program”.⁵

Several states have proposed to implement drug tests for SNAP beyond these limited circumstances.⁶ In 2015, Wisconsin included a provision in its budget bill to test applicants for the SNAP Employment and Training program.⁷ In April 2014, Gov. Nathan Deal of Georgia signed House Bill 772,⁸ which required the Department of Social Services to drug test TANF or SNAP applicants or recipients if there is reasonable suspicion of substance abuse. However, these laws have never been implemented. Bills requiring random testing of SNAP recipients have been proposed in Missouri⁹ and Rhode Island¹⁰ in recent years. It is likely that states will continue to propose similar bills. In addition, the federal proposal (H.R. 2179) to drug test for SNAP and other assistance programs may serve as a precursor to similar bills to come.

TANF Evidence Shows Drug Testing is Costly and Ineffective

Proponents of drug testing for government assistance programs claim it will save money by denying benefits to people who use drugs. However, requiring people who use SNAP or TANF to complete drug testing is based on misinformed stereotypes about the prevalence of substance abuse among recipients, rather than evidence. Former U.S. Secretary of Agriculture Tom Vilsack stated that Congress has “repeatedly rejected the expensive, intrusive practice of suspicion-less drug testing.”¹¹ In 1996, the National Institute of Alcohol Abuse and Alcoholism found that “proportions of welfare recipients using, abusing, or dependent on alcohol or illicit drugs are consistent with proportions of both the adult U.S. population and adults who do not receive welfare.”¹² Additionally, the experience of states that implemented drug testing for TANF cash assistance recipients between 2010 and 2014 found that it uncovered very little drug use. In fact, applicants had lower rates of testing positive for drug use than the general population.¹³ The national drug use rate is 9.4 percent.¹⁴ Among the states that implemented drug testing for TANF, the rate of positive drug tests among total welfare applicants ranges from 0.002 percent

to 8.3 percent, with every state but one having a rate below 1 percent.¹⁵

Furthermore, testing is costly, and states have found the costs are greater than the savings of denying benefits.¹⁶ The direct costs of the tests are only a portion of the total costs. A 2012 draft Missouri regulation showed the full accounting of costs, which includes the expense of reprogramming administrative databases, conducting hearings and appeals for recipients who challenge test results, and providing treatment services.¹⁷ In 2015, Missouri drug tested 293 of its 31,336 TANF applicants; only 38 of those tests came back positive. Meanwhile, the cost was \$336,297 for drug testing and system tracking.¹⁸

Drug Testing Policies Reduce Access to Food

Conditioning access to SNAP on drug tests takes away food from hungry people—including the children and families of the applicants. Most SNAP applicants currently conduct their eligibility interviews by phone. It would be hugely burdensome to require all applicants to come to an office where they would be administered a screening questionnaire to determine if a drug test was necessary. And it is not clear that administering a screening instrument by phone would be effective. Adding a separate screening step would delay the processing of applications. Some individuals might abandon their application rather than admitting to substance abuse. Beneficiaries whose screening process requires them to undergo testing will bear a significant time and effort burden, including scheduling, finding transportation, and missing work, school or caregiving responsibilities.

Even if only a tiny fraction of applicants are abusing drugs, the extra steps involved in screening and testing—and the stigmatizing effect of asking about drug use as part of the eligibility process—are likely to reduce low-income families' access to SNAP. In the past, some states even have required TANF recipients to pay for their own drug testing—a burden that can hinder people from applying, even if they aren't drug users. Other deterrents include being unable to take time off work, or lack of transportation to get to the testing site.

Reducing individuals' access to SNAP punishes them and their families. Children's development can suffer when a family's SNAP benefit is cut. That's because when children aren't adequately nourished, they can experience iron deficiency, anxiety, depression, attention deficit disorder, and other long-term health consequences.¹⁹ Hunger and food security are also associated with decreased academic performance. Additionally, SNAP supports employment because adequate nutrition improves the ability of people to perform in both physical and mental tasks so they are more likely to excel on their jobs and remain employed.

Drug Testing is a Poor Way to Identify People in Need of Treatment

Chemical tests do not test for abuse, but rather only the specific chemicals the test is designed to report. Many people occasionally use drugs without being addicted; federal data indicates that while 23.8 percent of adults reported having used drugs one or more times in the past year, only 1 percent were determined to be addicted, based on their responses to multiple survey questions.²⁰ The tests may catch occasional users of marijuana (which remains in the system on an ongoing basis) but miss abusers of alcohol (which is not on chemical screens) or opioid abusers who have abstained long enough that substances do not remain in their system. The tests also cannot distinguish between a person appropriately using prescription

painkillers and one who has become addicted (but has a valid prescription). For example, a Florida mother who recently had surgery was investigated for child abuse because the test detected the prescription painkiller she was taking.²¹ Misclassifications can also occur from mishandling of samples.

Although drug abuse can pose barriers to economic advancement²², occasional drug use by itself does not appear to have a significant impact on employment outcomes or receipt of public assistance. In a study of Florida TANF recipients, those who tested positive for drug use had earnings and were employed at nearly the same level as those who had tested negatively.²³ In another study, employed TANF recipients were found to use drugs at similar rates to those of unemployed recipients.²⁴ Studies indicate that most drug users are employed full-time.²⁵

Treatment Referrals Should be Part of a Comprehensive Assessment by a Trained Professional

For the small group of SNAP recipients who struggle with substance abuse and addiction, treatment may be crucial to improving their lives. However social workers and health care providers, not government bureaucrats, should be deciding who needs treatment. If policymakers are genuinely concerned about helping SNAP recipients, screening and assessment for substance abuse issues should be incorporated into employment and training assessments, not as a condition of eligibility for food assistance. Eligibility staff are highly unlikely to have the time or training needed to conduct comprehensive assessments and identify underlying issues that often contribute to substance abuse, including domestic violence histories or mental illness.²⁶

Most importantly, no one should be denied access to SNAP for lack of access to treatment. Because there are rarely enough treatment slots for everyone who seeks treatment, those in need are forced to wait for long periods of time before getting help.²⁷ Individuals waiting for treatment or currently participating in treatment program should always remain eligible for SNAP benefits. Policymakers who sincerely care about combatting abuse and addiction should commit to providing treatment to all those who need it, rather than depriving those suffering from addiction of basic nutritional supports.

¹ H.R. 2179, Drug Testing for Welfare Recipients Act, 2017, One Hundred Fifteenth Congress of the United States of America, April 26, 2017. <https://www.congress.gov/115/bills/hr244/BILLS-115hr244enr.pdf>

² Maggie McCarty, Gene Falk, Randy Alison Aussenberg, et al., *Drug Testing and Crime-Related Restrictions in TANF, SNAP, and Housing Assistance*, CLASP, 2006, <https://fas.org/sgp/crs/misc/R42394.pdf>.

³ McCarty et al., Drug Testing.

⁴ McCarty et al., Drug Testing

⁵ McCarty et al., Drug Testing.

⁶ Arthur Delaney, "No Drug Tests For Food Stamp Recipients, Feds Tell Georgia," *Huffington Post*, June 3, 2014, http://www.huffingtonpost.com/2014/06/03/food-stamps-drug-test_n_5440742.html.

⁷ *Drug Testing For Welfare Recipients And Public Assistance*, National Conference of State Legislatures, March 24, 2017, <http://www.ncsl.org/research/human-services/drug-testing-and-public-assistance.aspx>

⁸ Randi Hall, *Drug Testing and Public Assistance*, CLASP, 2016, <http://www.clasp.org/resources-and-publications/publication-1/2016.02.04-Drug-Testing-and-Public-Assistance-Brief-FINAL.pdf>.

⁹ H.B. 588, Drug Testing, 2015, Ninety Eighth General Assembly of the state of Missouri, <http://house.mo.gov/billtracking/bills151/hlrbillspdf/1244h.01i.pdf>

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- ¹⁵ CLASP, "Comments on the Draft 1115 Demonstration Waiver Amendment Application," May 18, 2017, <http://www.clasp.org/resources-and-publications/publication-1/CLASP-Wisconsin-1115-Waiver-Comments-to-State-FINAL.pdf>.
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