

# STATE OF NEW YORK

4540

2021-2022 Regular Sessions

## IN SENATE

February 5, 2021

Introduced by Sen. RIVERA -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law and the civil practice law and rules, in relation to recovery of overpayment of certain assistance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 104 of the social services law, subdivision 1 as amended by chapter 573 of the laws of 1964, subdivision 2 as amended by chapter 909 of the laws of 1974, subdivision 3 as added by chapter 433 of the laws of 1993 and subdivision 4 as added by chapter 340 of the laws of 2003, is amended to read as follows:

§ 104. Recovery from a person discovered to have property. 1. For purposes of this section:

(a) "Overpayment" shall include erroneous payments made to an eligible person in excess of the recipient's needs as defined in this chapter and erroneous payments made to ineligible persons, including but not limited to, payments made to such persons pending a fair hearing decision.

(b) "Recipient" shall mean any individual who is currently receiving or at one time received assistance or care as pursuant to the provisions of this title.

2. A public welfare official may bring an action or proceeding in a court of competent jurisdiction against a [~~person~~] recipient who is discovered to have real or personal property, which resulted in an overpayment to the recipient, or against the estate or the executors, administrators and successors in interest of a person who dies leaving real or personal property, [~~if such person, or any one for whose support he is or was liable, received assistance and care during the preceding ten years, and~~] and there has been an overpayment to the recipient. The public welfare official shall be entitled to recover up to the value of such property which cause the assistance or care to constitute an overpayment to the recipient or the cost of such assistance or care, which-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

LBD09184-01-1

1 ever is lower. Any public assistance or care received by such person  
2 shall constitute an implied contract. [~~No claim of a public welfare~~  
3 ~~official against the estate or the executors, administrators and succes-~~  
4 ~~sors in interest of a person who dies leaving real or personal property,~~  
5 ~~shall be barred or defeated, in whole or in part, by any lack of suffi-~~  
6 ~~ciency of ability on the part of such person during the period assist-~~  
7 ~~ance and care were received.~~

8 ~~Nor shall the claim asserted by a public welfare official against any~~  
9 ~~person under this section be impaired, impeded, barred or defeated, in~~  
10 ~~whole or in part, on the grounds that another person or persons may also~~  
11 ~~have been liable to contribute.]~~

12 In all claims of the public welfare official made under this section  
13 the public welfare official shall be deemed a preferred creditor.

14 [~~2.~~ No] 3. The public welfare official shall not bring an action or  
15 proceeding under this section if excess payments or payments made to the  
16 person were made due to agency or contractor error, including but not  
17 limited to an error made by a facilitated enroller.

18 4. In an action or proceeding under this section, the complaint shall  
19 be accompanied by a certificate, signed by the attorney for the public  
20 welfare official, declaring the following:

21 (a) the attorney has reviewed the facts of the case and has concluded  
22 that there is a reasonable basis for the action or proceeding;

23 (b) certification that the continuous coverage protections under para-  
24 graph (c) of subdivision four of section three hundred sixty-six of this  
25 chapter do not apply to the recipient;

26 (c) the specific eligibility criteria under which the recipient was  
27 allegedly ineligible for benefits; the budgeting methodology that was  
28 applied in making the determination that the recipient was ineligible  
29 for benefits, including the applicable resource or income limit for the  
30 recipient's household composition during the claim period, and the  
31 recipient's applicable resources and income during the claim period; the  
32 time period during which the recipient was allegedly ineligible; the  
33 value of the real or personal property which resulted in an overpayment;  
34 and the amount of recovery sought; and

35 (d) the action or proceeding is supported by exhibits including an  
36 accounting of the recovery sought and all expenditures of assistance or  
37 care made on behalf of the recipient during the period of alleged inel-  
38 igibility.

39 5. There shall be no right of action [~~shall accrue against~~] to recover  
40 an alleged overpayment for assistance or care received by a person under  
41 twenty-one years of age [~~by reason of the assistance or care granted to~~  
42 ~~him unless at the time it was granted the person was possessed of money~~  
43 ~~and property in excess of his reasonable requirements, taking into~~  
44 ~~account his maintenance, education, medical care and any other factors~~  
45 ~~applicable to his condition)].~~

46 [~~3.~~] 6. To the extent described in section 7-1.12 of the estates,  
47 powers and trusts law, the trustee of a supplemental needs trust which  
48 conforms to the provisions of such section 7-1.12 shall not be deemed to  
49 be holding assets for the benefit of a beneficiary who may otherwise be  
50 the subject of a claim under this section and no action or proceeding  
51 may be brought against either the trust or the trustee to recover the  
52 cost of assistance or care provided to such person, or anyone for whose  
53 support such person is or was liable.

54 [~~4.~~] 7. Any inconsistent provision of this chapter or of any other law  
55 notwithstanding, a social services official may not assert any claim  
56 under any provision of this chapter to recover payments of public

1 assistance if such payments were reimbursed by child support  
2 collections.

3 8. There shall be no right of action against a recipient who loses  
4 medical assistance eligibility by reason of excess resources or income  
5 because the recipient's medical assistance eligibility group, as deter-  
6 mined under section three hundred sixty-six of this chapter, changed  
7 from MAGI, as defined in section three hundred sixty-six of this chap-  
8 ter, to non-MAGI, for the two years subsequent to their eligibility  
9 change. A right of action against such a recipient begins to accrue  
10 only if the recipient remains ineligible for medical assistance after  
11 the two-year grace period.

12 9. The public welfare official shall not use confession of judgment to  
13 recover an overpayment.

14 10. Any action or proceeding to recover an overpayment under this  
15 section shall be waived in cases of undue hardship in which a recipi-  
16 ent's adjusted gross income for the applicable household size is two  
17 hundred fifty percent of the federal poverty line or lower and in cases  
18 of other extenuating circumstances as determined by the public welfare  
19 official.

20 11. Any action or proceeding under this section shall be commenced  
21 within two years from payment for assistance or care. No determination  
22 of a debt or award of debt shall be based upon payment for assistance or  
23 care that occurred more than two years before the action or proceeding  
24 is commenced.

25 12. The rate of interest for a judgment obtained pursuant to this  
26 section shall be calculated at the one-year United States treasury bill  
27 rate. For the purpose of this section, the "one-year United States  
28 treasury bill rate" means the weekly average one-year constant maturi-  
29 ty treasury yield, as published by the board of governors of the federal  
30 reserve system, for the calendar week preceding the date of the entry  
31 of the judgment awarding damages.

32 13. There shall be no right of action against a recipient whose  
33 medical assistance eligibility was granted or extended during the period  
34 of the COVID-19 public health emergency, defined for the purposes of  
35 this section as March eighteenth, two thousand twenty through the end of  
36 the quarter when such public health emergency ends.

37 14. All settlement and payment agreements under this section in which  
38 the recipient has paid fifty percent or more of the debt by the end of  
39 the COVID-19 public health emergency ends are hereby considered paid in  
40 full.

41 15. If a recipient subject to a settlement or payment agreement under  
42 this section has not paid fifty percent or more of the debt by the end  
43 of the COVID-19 public health emergency ends, the recipient may submit  
44 evidence of undue hardship and receive waiver of the remaining debt  
45 under subdivision ten of this section or an appropriate reduction of  
46 debt based on hardship. Notice regarding the opportunity for the waiver  
47 shall be provided by the public welfare official.

48 § 2. The civil practice law and rules is amended by adding a new  
49 section 3012-c to read as follows:

50 § 3012-c. Certificate of merit in certain overpayment of assistance  
51 actions. In any action or proceeding for recovery of an overpayment of  
52 assistance or care, as defined in section one hundred four of the social  
53 services law, the complaint shall be accompanied by a certificate,  
54 signed by the attorney for the public welfare official, meeting all the  
55 requirements of section one hundred four of the social services law.

§ 3. The civil practice law and rules is amended by adding a new section 3202 to read as follows:

§ 3202. Confession of judgment for recovery of overpayment of certain assistance invalid. Notwithstanding the provisions of section thirty-two hundred eighteen of this article, no judgment by confession shall be entered to recover an overpayment, as defined in section one hundred four of the social services law. Any judgment entered in violation of this section is void and unenforceable.

§ 4. The civil practice law and rules is amended by adding a new section 213-e to read as follows:

§ 213-e. Actions to be commenced within two years; actions to recover certain overpayments. An action or proceeding on an overpayment by a public welfare official under section one hundred four of the social services law shall be commenced within two years from payment for assistance or care, and no determination of a debt or award of debt shall be based upon payment for assistance or care that occurred more than two years before the action or proceeding is commenced.

§ 5. Section 106-b of the social services law, as amended by chapter 81 of the laws of 1995, is amended to read as follows:

§ 106-b. Adjustment for incorrect payments. 1. For purposes of this section:

(a) "Overpayment" shall include erroneous payments made to an eligible person in excess of the recipient's needs as defined in this chapter and erroneous payments made to ineligible persons, including but not limited to, payments made to those persons pending a fair hearing decision.

(b) "Recipient" shall mean any individual who is currently receiving or at one time received assistance or care under this title.

2. Any inconsistent provision of law notwithstanding, a social services official shall, in accordance with the regulations of the department and consistent with federal law and regulations, take all necessary steps to correct any overpayment or underpayment to a public assistance recipient~~[, provided, however,]~~. However:

(a) A social services official shall not bring an action or proceeding under this section:

(i) if excess payments or payments made to an ineligible person were made due to agency or contractor error, including but not limited to an error made by a facilitated enroller; or

(ii) to recover an overpayment under this section for assistance or care received by a person under twenty-one years of age.

(b) [that a] A social services official [may] shall waive recovery of a past overpayment, in the case of an individual who is not currently a recipient of public assistance, where the cost of recovery is greater than the cost of collections as determined in accordance with department regulations consistent with federal law and regulations. [~~For purposes of this section, overpayment shall include payments made to an eligible person in excess of his needs as defined in this chapter and payments made to ineligible persons (including payments made to such persons pending a fair hearings decision). The commissioner shall promulgate regulations to implement procedures for correcting overpayments and underpayments. The~~]

(c) In any action or proceeding to recover an overpayment under this section, the social services official shall be entitled to recover no more than the value of the property which resulted in an overpayment to the recipient or the cost of the assistance or care, whichever is lower.

(d) Any action or proceeding to recover an overpayment under this section shall be waived in cases of undue hardship in which a recipi-

ent's adjusted gross income for the applicable household size is two hundred fifty percent of the federal poverty line or lower and in cases of other extenuating circumstances as determined by the social services official.

3. The procedures for correcting overpayments shall be designed to and shall minimize adverse impact on the recipient, and to the extent possible avoid undue hardship. ~~[Notwithstanding any other provision of law to the contrary, no underpayment shall be corrected with respect to a person who is currently not eligible for or in receipt of home relief or aid to dependent children, except that corrective payments may be made with respect to persons formerly eligible for or in receipt of aid to dependent children to the extent that federal law and regulations require.]~~

4. A social services official shall follow the following procedures when correcting any overpayment or underpayment to a public assistance recipient under this section:

(a) When determining whether a recipient may be liable for an overpayment, the most favorable budgeting under the applicable law and rules shall be used to determine eligibility for assistance or care.

(b) After identification and verification of an overpayment, and prior to meeting with the recipient under investigation, a written notice containing the following information shall be mailed to the recipient:

(i) a statement of the specific eligibility criteria under which the recipient was allegedly ineligible for benefits;

(ii) the budgeting methodology, under the applicable law and rules, applied in making the decision to pursue recovery of an alleged overpayment;

(iii) the time period during which the recipient was allegedly ineligible;

(iv) the value of the real or personal property that resulted in an overpayment;

(v) the amount of recovery sought, including an accounting of the recovery sought and all expenditures of assistance or care made on behalf of the recipient during the period of ineligibility;

(vi) an explanation of the recipient's rights to bring counsel or any other person to any meeting with social services officials and to leave any meeting with social services officials at any time; and

(vii) an explanation of the recipient's right to challenge liability for an overpayment by establishing eligibility for assistance or care using the most favorable budgeting under the applicable law and rules.

(c) No documents may be requested from recipients during an investigation of an alleged overpayment unless it is directly relevant to the eligibility factors and time periods for which the social services official has a good faith basis to believe the recipient was ineligible. The recipient shall be given a reasonable amount of time to respond to document requests and meeting requests, taking into account time periods necessary for third parties to provide documents.

(d) In the case of an alleged medical assistance overpayment, districts shall contact recipient's managed care plans to ascertain whether the recipient accessed services during the time period when recovery is being contemplated.

5. No settlement agreement or payment plan to recover an overpayment shall be effective unless a social services official with personal knowledge of the claims produces an affidavit attesting to the validity of the claims against the recipient, including but not limited to an attestation that the social services official has determined that the contin-

uous coverage protections pursuant to paragraph (c) of subdivision four of section three hundred sixty-six of this chapter do not apply to the recipient. The attestation must also state the specific eligibility criteria under to which the recipient was allegedly ineligible for benefits; the budgeting methodology under the applicable laws and rules that was applied in making the determination that the recipient was ineligible for benefits, including the applicable resource or income limits for the recipient's household composition during the claim period, and the recipient's applicable resources and income during the claim period; the time period during which the recipient was allegedly ineligible; the value of the real or personal property which resulted in an overpayment; and the amount of recovery sought. The affidavit shall be supported by exhibits including an accounting of the recovery sought and all expenditures of assistance or care made on behalf of the recipient during the period of ineligibility.

6. The social services official shall not use a confession of judgment to recover an overpayment.

7. There shall be no action or proceeding to recover an overpayment under this section for medical assistance benefits against a recipient whose medical assistance eligibility was granted or extended during the period of the COVID-19 public health emergency, to be defined as March eighteenth, two thousand twenty through the end of the quarter when such public health emergency ends.

8. All settlement agreements and payment plans obtained under this section in which the recipient has paid fifty percent or more of the debt by the end of the COVID-19 public health emergency are hereby considered paid in full.

9. If a recipient subject to a settlement agreement or payment plan under this section has not paid fifty percent or more of the debt by the end of the COVID-19 public health emergency, the recipient shall be allowed to submit evidence of undue hardship for waiver of the remaining debt under paragraph (e) of subdivision two of this section or an appropriate reduction of debt based on hardship. Notice regarding the opportunity for such a waiver shall be provided by the social services official.

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to any claim, matter, or administrative or legal action or proceeding pending at or after that time. The commissioner of health, the commissioner of the office of temporary and disability assistance, and local social services officials shall make regulations and take other actions reasonably necessary to implement this act on that date.