

STATE OF NEW YORK

5613

2021-2022 Regular Sessions

IN ASSEMBLY

February 22, 2021

Introduced by M. of A. GOTTFRIED -- read once and referred 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 Assem-
bly, do enact as follows:

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

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

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

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

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

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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.

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

3 § 3202. Confession of judgment for recovery of overpayment of certain
4 assistance invalid. Notwithstanding the provisions of section thirty-two
5 hundred eighteen of this article, no judgment by confession shall be
6 entered to recover an overpayment, as defined in section one hundred
7 four of the social services law. Any judgment entered in violation of
8 this section is void and unenforceable.

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

11 § 213-e. Actions to be commenced within two years; actions to recover
12 certain overpayments. An action or proceeding on an overpayment by a
13 public welfare official under section one hundred four of the social
14 services law shall be commenced within two years from payment for
15 assistance or care, and no determination of a debt or award of debt
16 shall be based upon payment for assistance or care that occurred more
17 than two years before the action or proceeding is commenced.

18 § 5. Section 106-b of the social services law, as amended by chapter
19 81 of the laws of 1995, is amended to read as follows:

20 § 106-b. Adjustment for incorrect payments. 1. For purposes of this
21 section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) the budgeting methodology, under the applicable law and rules,
26 applied in making the decision to pursue recovery of an alleged overpay-
27 ment;

28 (iii) the time period during which the recipient was allegedly ineli-
29 gible;

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

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

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

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

41 (c) No documents may be requested from recipients during an investi-
42 gation of an alleged overpayment unless it is directly relevant to the
43 eligibility factors and time periods for which the social services offi-
44 cial has a good faith basis to believe the recipient was ineligible. The
45 recipient shall be given a reasonable amount of time to respond to docu-
46 ment requests and meeting requests, taking into account time periods
47 necessary for third parties to provide documents.

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

52 5. No settlement agreement or payment plan to recover an overpayment
53 shall be effective unless a social services official with personal knowl-
54 edge of the claims produces an affidavit attesting to the validity of
55 the claims against the recipient, including but not limited to an attes-
56 tation that the social services official has determined that the contin-

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

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

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

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

28 9. If a recipient subject to a settlement agreement or payment plan
29 under this section has not paid fifty percent or more of the debt by the
30 end of the COVID-19 public health emergency, the recipient shall be
31 allowed to submit evidence of undue hardship for waiver of the remaining
32 debt under paragraph (e) of subdivision two of this section or an appro-
33 priate reduction of debt based on hardship. Notice regarding the oppor-
34 tunity for such a waiver shall be provided by the social services offi-
35 cial.

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