

# STATE OF NEW YORK

4540--A

2021-2022 Regular Sessions

## IN SENATE

February 5, 2021

Introduced by Sens. RIVERA, HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

The People of the State of New York, represented in Senate and Assembly, 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~~

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

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1 ~~years, and]~~ and there has been an overpayment to the recipient. The  
2 public welfare official shall be entitled to recover up to the value of  
3 such property which cause the assistance or care to constitute an over-  
4 payment to the recipient or the cost of such assistance or care, which-  
5 ever is lower. ~~[Any public assistance or care received by such person~~  
6 ~~shall constitute an implied contract. No claim of a public welfare offi-~~  
7 ~~cial against the estate or the executors, administrators and successors~~  
8 ~~in interest of a person who dies leaving real or personal property,~~  
9 ~~shall be barred or defeated, in whole or in part, by any lack of suffi-~~  
10 ~~ciency of ability on the part of such person during the period assist-~~  
11 ~~ance and care were received.~~

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

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

18 ~~[2, No]~~ 3. The public welfare official shall not bring an action or  
19 proceeding under this section if excess payments or payments made to the  
20 person were made due to agency or contractor error, including but not  
21 limited to an error made by a facilitated enroller.

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

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

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

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

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

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

50 ~~[3-]~~ 6. To the extent described in section 7-1.12 of the estates,  
51 powers and trusts law, the trustee of a supplemental needs trust which  
52 conforms to the provisions of such section 7-1.12 shall not be deemed to  
53 be holding assets for the benefit of a beneficiary who may otherwise be  
54 the subject of a claim under this section and no action or proceeding  
55 may be brought against either the trust or the trustee to recover the

1 cost of assistance or care provided to such person, or anyone for whose  
2 support such person is or was liable.

3 ~~[4-]~~ 7. Any inconsistent provision of this chapter or of any other law  
4 notwithstanding, a social services official may not assert any claim  
5 under any provision of this chapter to recover payments of public  
6 assistance if such payments were reimbursed by child support  
7 collections.

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

17 9. The public welfare official shall not use confession of judgment to  
18 recover an overpayment of public assistance or care, or supplemental  
19 nutrition assistance benefits.

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

26 11. Any action or proceeding under this section shall be commenced  
27 within two years from payment for assistance or care. No determination  
28 of a debt or award of debt shall be based upon payment for assistance or  
29 care that occurred more than two years before the action or proceeding  
30 is commenced.

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

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

43 14. All settlement and payment agreements under this section in which  
44 the recipient has paid fifty percent or more of the debt by the end of  
45 the COVID-19 public health emergency are hereby deemed paid in full.

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

53 § 2. Subdivision 7 of section 158 of the social services law is  
54 REPEALED.

55 § 3. The civil practice law and rules is amended by adding a new  
56 section 3012-c to read as follows:

1     § 3012-c. Certificate of merit in certain overpayment of assistance  
2     actions. In any action or proceeding for recovery of an overpayment of  
3     assistance or care, as defined in section one hundred four of the social  
4     services law, the complaint shall be accompanied by a certificate,  
5     signed by the attorney for the public welfare official, meeting all the  
6     requirements of section one hundred four of the social services law.

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

9     § 3202. Confession of judgment for recovery of overpayment of certain  
10    assistance invalid. Notwithstanding the provisions of section thirty-two  
11    hundred eighteen of this article, no judgment by confession shall be  
12    entered to recover an overpayment, as defined in section one hundred  
13    four of the social services law. Any judgment entered in violation of  
14    this section is void and unenforceable.

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

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

24    § 6. Section 106-b of the social services law, as amended by chapter  
25    81 of the laws of 1995, is amended to read as follows:

26    § 106-b. Adjustment for incorrect payments. 1. For purposes of this  
27    section:

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

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

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

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

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

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

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

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

5 (d) Any action or proceeding to recover an overpayment under this  
6 section shall be waived in cases of undue hardship in which a recipi-  
7 ent's adjusted gross income for the applicable household size is two  
8 hundred fifty percent of the federal poverty line or lower and in cases  
9 of other extenuating circumstances as determined by the social services  
10 official.

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

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

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

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

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

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

34 (iii) the time period during which the recipient was allegedly ineli-  
35 gible;

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

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

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

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

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

54 (d) In the case of an alleged medical assistance overpayment,  
55 districts shall contact recipient's managed care plans to ascertain

1 whether the recipient accessed services during the time period when  
2 recovery is being contemplated.

3 5. No settlement agreement or payment plan to recover an overpayment  
4 shall be effective unless a social services official with personal know-  
5 ledge of the claims produces an affidavit attesting to the validity of  
6 the claims against the recipient, including but not limited to an attes-  
7 tation that the social services official has determined that the contin-  
8 uous coverage protections pursuant to paragraph (c) of subdivision four  
9 of section three hundred sixty-six of this chapter do not apply to the  
10 recipient. The attestation must also state the specific eligibility  
11 criteria under to which the recipient was allegedly ineligible for bene-  
12 fits; the budgeting methodology under the applicable laws and rules that  
13 was applied in making the determination that the recipient was ineligi-  
14 ble for benefits, including the applicable resource or income limits for  
15 the recipient's household composition during the claim period, and the  
16 recipient's applicable resources and income during the claim period; the  
17 time period during which the recipient was allegedly ineligible; the  
18 value of the real or personal property which resulted in an overpayment;  
19 and the amount of recovery sought. The affidavit shall be supported by  
20 exhibits including an accounting of the recovery sought and all expendi-  
21 tures of assistance or care made on behalf of the recipient during the  
22 period of ineligibility.

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

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

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

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

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