

# STATE OF NEW YORK

4888--A

2023-2024 Regular Sessions

## IN SENATE

February 16, 2023

Introduced by Sens. RIVERA, HOYLMAN-SIGAL, JACKSON, KAVANAGH, SEPULVEDA -- 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~~

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

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

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

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

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

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

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

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

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

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

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

51 ~~[3.]~~ 6. To the extent described in section 7-1.12 of the estates,  
52 powers and trusts law, the trustee of a supplemental needs trust which  
53 conforms to the provisions of such section 7-1.12 shall not be deemed to  
54 be holding assets for the benefit of a beneficiary who may otherwise be  
55 the subject of a claim under this section and no action or proceeding  
56 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. Where by law, interest is imposed as a part of a judgment obtained  
32 pursuant to this section, the interest shall be calculated at no more  
33 than the one-year United States treasury bill rate. For the purpose  
34 of this section, the "one-year United States treasury bill rate" means  
35 the weekly average one-year constant maturity treasury yield, as  
36 published by the board of governors of the federal reserve system, for  
37 the calendar week preceding the date of the entry of the judgment award-  
38 ing damages.

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

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

49 15. Subdivisions five, eight, ten, thirteen and fourteen of this  
50 section shall not apply to any case involving actual fraud.

51 § 2. Subdivision 7 of section 158 of the social services law is  
52 REPEALED.

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

55 § 3012-c. Certificate of merit in certain overpayment of assistance  
56 actions. In any action or proceeding for recovery of an overpayment of

1 assistance or care, as defined in section one hundred four of the social  
2 services law, the complaint shall be accompanied by a certificate,  
3 signed by the attorney for the public welfare official, meeting all the  
4 requirements of section one hundred four of the social services law.

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

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

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

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

22 § 6. Section 106-b of the social services law, as amended by chapter  
23 81 of the laws of 1995, is amended to read as follows:

24 § 106-b. Adjustment for incorrect payments. 1. For purposes of this  
25 section:

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

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

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

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

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

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

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

55 (c) In any action or proceeding to recover an overpayment under this  
56 section, the social services official shall be entitled to recover no

1 more than the value of the property which resulted in an overpayment to  
2 the recipient or the cost of the assistance or care, whichever is lower.

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

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

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

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

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

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

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

32 (iii) the time period during which the recipient was allegedly ineli-  
33 gible;

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

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

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

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

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

52 (d) In the case of an alleged medical assistance overpayment,  
53 districts shall contact recipient's managed care plans to ascertain  
54 whether the recipient accessed services during the time period when  
55 recovery is being contemplated; the managed care plan shall cooperate  
56 with the district by expeditiously providing information that is reason-



ably necessary for the district to establish its claim, consistent with protecting the confidentiality of patient information.

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 continuous 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. 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.

8. 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 (d) 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.

9. Clause (ii) of paragraph (a) and paragraph (b) of subdivision two, subdivision seven, and subdivision eight of this section shall not apply to any case involving actual fraud.

§ 6-a. If the implementation of any provision of this act without jeopardizing federal financial participation requires a waiver or waivers from the federal Centers for Medicare and Medicaid Services (CMS), the commissioner of the department of health shall expeditiously apply for and use the commissioner's best efforts to obtain approval of the necessary waiver or waivers.

§ 6-b. Severability. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 7. 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

1 temporary and disability assistance, and local social services officials  
2 shall make regulations and take other actions reasonably necessary to  
3 implement this act on that date.