House Legislative Analysis Section

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PUBLIC ASSISTANCE OVERPMTS.

AS ENROLLED

House Bill 4299 as introduced
First Analysis (2-25-93)

Sponsor: Rep. Sandra Hill
Committee: Human Services & Children

THE APPARENT PROBLEM:

Although the Department of Social Services (DSS) has a procedure to recover overpayments of public assistance from both current and former recipients, legal authority to recover from former recipients is lacking. The problem was identified in 1989 by the court of appeals in Powers v DSS (179 Mich App 416). In that case, the DSS had sought repayment of $1,756 in Aid to Families with Dependent Children (AFDC) funds that the department had, through its own error, mistakenly paid to a recipient. A hearing referee ruled in favor of the department, and Ms. Powers appealed the decision to the circuit court; at this point in the process Ms. Powers found employment and went off AFDC.

The court of appeals said that "although the DSS could have properly recouped its overpayment" from Ms. Powers while she was a recipient, the department lost that ability once she went off public assistance. The court noted that as federal regulations require the DSS to recoup overpayments made to current recipients of public assistance, the department may do so under its internal policies, even though those policies are not rules promulgated under the Administrative Procedures Act. With regard to former recipients, however, federal regulations merely direct that recovery be made "by appropriate action under state law." Thus, reasoned the court, internal DSS policies are not sufficient to provide the department with the authority to recoup overpayments from people no longer receiving public assistance.

According to the DSS, there are about 40,000 cases involving client error overpayments to former recipients of AFDC, state assistance, and food stamps, with about 1,000 new AFDC overpayment cases added each year. Outstanding overpayments total about $111 million ($8.5 million due to agency error, and $102.5 million due to client error, including fraud). While roughly half of any money recovered in connection with a federally-assisted program would be returned to the federal government, the remainder would be retained by the state. To enable it to pursue recovery of these funds, the department seeks amendments to the Social Welfare Act that will provide the department with the authority to establish its recoupment program by administrative rule.

THE CONTENT OF THE BILL:

The bill would amend the Social Welfare Act to provide for the recovery of overpayments made to recipients of public assistance, including payments made to ineligible people. The Department of Social Services would have to take all necessary steps, including administrative or court action, to recover an overpayment. For overpayments made under federally-assisted programs, procedures would have to be consistent with federal law and regulations.

The department could waive recovery from a person who was no longer a recipient if the cost of the effort equalled or exceeded the amount of the overpayment, or if the error was made by the department. Except as prohibited by federal law or regulation, the department could waive recovery if it would cause undue hardship to the recipient, as determined by the department.

The bill would extend to former recipients existing provisions that allow a recipient to request a hearing on an appeal or complaint. Existing provisions on administrative hearings also would be extended to apply to cases involving state, as well as federal, funds. The bill would delete language that makes decisions in these cases binding on each county or district department of social services involved.

The state department would report annually to the legislature on the cost effectiveness of overpayment recovery efforts.

MCL 400.9 and 400.43a

FISCAL IMPLICATIONS:

The DSS estimates that collections under the bill would provide $10.87 million in net general fund/general purpose savings, taking anticipated collection costs into account, and assuming that the department does not attempt to collect debts of less than $350 (this figure is the estimated cost of collection). The department estimates that had legislation such as the bill been in place last year, it could have saved about $2 million for the general fund for fiscal year 1991-92. (2-23-93)

ARGUMENTS:

For:

The bill would enable the DSS to recoup overpayments to former recipients of public assistance, something that is now limited to fraud prosecutions and situations where the recipient signed a voluntary recoupment agreement. In the process, the state stands to gain millions of dollars at the rate of roughly $2 million per year, allowing for uncollectible cases, cases where the costs of collection would not merit the effort, and payment of the federal share of any collections. With the bill, the department could implement procedures that call for administrative hearings on client error cases and, with the cooperation of the Department of Treasury, the interception of tax refunds to collect money due.

The bill is improved by the inclusion of a number of safeguards: the department would have the discretion not to pursue recoupment when it would cause undue hardship or would not be cost-effective, or when the error had been made by the department. Further, as the bill would extend to former recipients the right to demand a hearing, the bill would assure the protections of due process of law for all recoupment cases. Finally, the department would have to annually report to the legislature on the effectiveness of its recoupment program.

Against:

Despite the safeguards contained in the bill, concerns may linger over whether it is proper or fair to allow the DSS to pursue former recipients for recoupment of overpayments that were due to department error. Someone who has just managed to obtain employment and get off public assistance is not likely to have much money with which to pay an award of even a few hundred dollars. While the department could opt not to pursue recoupment when the overpayment was due to its own error, doubtless many would prefer not to leave that decision in the hands of the department. After all, it was department error that led to the overpayment in the Powers case, where nearly $1,800 was sought from a newly-employed mother.

Response:

It is anticipated that reasonable payment schedules mutually agreeable to both parties will be worked out in most cases. It is not the department's aim to break the back of the working poor. Moreover, the great bulk of the outstanding overpayment total is due to client error or fraud.

POSITIONS:

The Department of Social Services strongly supports the bill. (2-23-93)