

SFA

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

• (517) 373-5383

House Bill 5947 (Substitute H-1 as reported with amendment)

Sponsor: Representative Thomas L. Hickner

House Committee: Social Service and Youth

Senate Committee: Human Resources and Senior Citizens

Date Completed: 10-16-90

RATIONALE

The Federal Supplemental Security Income (SSI) program pays benefits to people who are indigent and aged, blind, or disabled. People who apply for SSI benefits and are denied them may appeal for a redetermination of eligibility. While such an appeal is pending, these people may be eligible to receive interim assistance in the form of General Assistance (GA) or Aid to Families with Dependant Children (AFDC). If a person receiving interim assistance wins his or her appeal, the State is entitled to be reimbursed for the interim assistance from the person's retroactive benefits. The Michigan Social Welfare Act requires the Department of Social Services to pay a reasonable attorney's fee on behalf of a recipient of interim assistance who won retroactive SSI benefits in a proceeding against the Federal Social Security Administration (SSA), if the proceeding resulted in a reimbursement to the State for interim assistance paid to the recipient during the period covered by the award. Although the program reportedly has been quite successful, the Act's provision regarding payment of attorneys' fees by the Department will expire November 30, 1990. Further, there reportedly are many instances in which the fee for representation in a proceeding regarding SSI benefits that an attorney charges the Department is less than the fee that the Department is required by the Act to pay to the attorney.

In addition, although retroactive SSI benefits usually are sent directly to the State, benefits occasionally have been sent erroneously to the client. In those instances, the client is required to reimburse the State for interim assistance. Reimbursement from the client to the State can

be paid in a lump sum payment or by monthly installments. Administration of this provision apparently can become quite burdensome for the Department when a client pays in monthly installments. The Department has to keep track of reimbursements sent in by the client and payments made to the attorney who represented the client. In addition, administration of reimbursements made by clients to the Department can be costly when the reimbursements are made in small amounts, such as \$10, because the Department has to calculate its share of the reimbursement and the attorney share.

It has been suggested that the Social Welfare Act be amended to continue the attorney fee payment program and address the administrative issues.

CONTENT

The bill would amend the Social Welfare Act to change the conditions under which the Department of Social Services is required to pay attorney fees in cases involving Social Security Income benefits and the method for determining the amount of the fee, and to delete language that provides for a repeal of the fee provisions on November 30, 1990 (three years after the effective date of Public Act 184 of 1987, which provided for the payment of the fees).

Specifically, the bill would require the Department to pay a fee to an attorney or other competent professional who represented a

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person in obtaining benefits from the Federal Social Security Administration in a proceeding establishing retroactive benefits for the person under the Social Security Income for the Aged, Blind, and Disabled Program, only if the proceeding resulted in a direct reimbursement to the Department of interim assistance paid to the person for the period covered by the award. "Direct reimbursement" would mean a lump sum payment to the Department from the Social Security Administration or from the person who received the interim assistance. "Interim assistance" would mean General Assistance paid to a person during the period covered by the award. (Currently, the term includes AFDC as well as GA.)

Further, the bill specifies that the fee paid by the State in any individual proceeding would be determined based on the amount billed and the amount of reimbursed interim assistance. If the reimbursement were \$500 or less, the fee would be the lesser of the amount billed or the amount reimbursed to the Department. If the reimbursement were \$500.01 to \$2,000, the fee would be the lesser of the amount billed or \$500. If the reimbursement exceeded \$2,000, the fee would be the lesser of the amount billed or 25% of the reimbursement. Currently, the attorney fee paid by the State is \$500 or an amount equal to 25% of the amount of the reimbursed interim assistance that the State is entitled to retain, whichever is greater; if the amount of the reimbursed assistance that the State is entitled to retain is less than \$500, the fee is equal to the amount of the reimbursed assistance.

MCL 400.44

SENATE COMMITTEE ACTION

The Senate Human Resources and Senior Citizens Committee adopted an amendment to delete Aid to Families with Dependent Children from the definition of "interim assistance".

FISCAL IMPACT

Each year the Department is able to shift a few thousand State GA cases to the Federal Supplemental Security Income program, thereby reducing total GF/GP costs. A portion of these case shifts are effected through the use of private attorneys. Current law allows the State to reimburse lawyers fees, given a successful

outcome, but the law is set to expire (sunset) on November 30 of this year. If it is assumed that active attorney participation enhances the continued shift of these cases, then the passage of this bill, which would repeal this sunset, should enable the State to continue to produce savings and avoided costs of about \$5 for every \$1 spent on attorney's fees.

ARGUMENTS

Supporting Argument

Maintenance of the payment provision for attorneys who represent clients in SSI appeal proceedings would be beneficial for everyone involved: attorneys could continue to receive payment for representing clients in appeals for SSI benefits, clients could continue to receive more benefits under the SSI program than they do under State programs when an attorney is successful in winning an appeal to the SSA, and the State could continue to transfer clients to the Federal program and save money. In addition, the bill would help the Department save money by decreasing administrative costs and allowing the Department to pay less in attorney's fees.

Legislative Analyst: L. Burghardt
Fiscal Analyst: J. Walker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.