



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone 517/373-6466

PAY ATTORNEY FEES FOR SSI RECIPIENTS

House Bill 4197 with committee amendments
First Analysis (4-8-87)

RECEIVED

Sponsor: Rep. Thomas L. Hickner

Committee: Social Services and Youth **MAY 07 1987**

Mich. State Law Library

THE APPARENT PROBLEM:

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 may appeal for a redetermination of eligibility. While such an appeal is pending, these people are eligible to receive 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 by the federal government for the interim assistance out of the person's retroactive benefits. Although federal law provides for attorneys' fees to be paid out of lump-sum retroactive benefits granted to those who win appeals of denials of regular Social Security disability cases, there is no such provision in the equivalent program for the poor, SSI. The Department of Social Services has an advocacy program to assist its clients in such appeals, but the program's 17 employees are limited as to the number of cases they can take on. Many people have suggested that the state would receive a worthwhile return on its investment if it would pay reasonable attorneys' fees for GA and AFDC clients appealing SSI eligibility.

THE CONTENT OF THE BILL:

The bill would amend the Social Welfare Act to require the Department of Social Services to pay a reasonable attorney's fee on behalf of a recipient of AFDC or general assistance who won retroactive Supplemental Security Income (SSI) benefits in a proceeding against the federal Social Security Administration, if the proceeding resulted in a reimbursement to the state for interim assistance paid to the recipient during the period covered by the award. The department could contract with attorneys to represent clients who might be entitled to retroactive SSI benefits. The attorney's fee could not exceed the amount of reimbursement received by the state. The provisions of the bill would be repealed three years after the effective date of the bill (MCL 400.44).

FISCAL IMPLICATIONS:

According to the Department of Social Services, the bill would result in a net savings to the state, although the amount cannot be determined at this time. Savings would occur because payment of attorneys' fees would be expected to yield an increased number of successful appeals of SSI cases, resulting in a transfer of clients from state assistance programs to the federally funded SSI program. The actual payment of attorneys' fees would be more than offset by the costs avoided (3-24-87).

ARGUMENTS:

For:

People who must appeal a denial of SSI are frequently without adequate legal representation. Most private attorneys are unwilling to take on SSI appeal cases because there is no reasonable expectation of payment for their

services. Though the advocacy program of the Department of Social Services has been very effective in winning appeals on behalf of indigent clients, that program cannot serve all the clients in need of such aid. Likewise, cutbacks in federal legal aid programs have made it impossible for those agencies to meet the demand for assistance in SSI appeals. The bill could be expected to increase the number of successful appeals of SSI denials, resulting in the transfer of people off the GA and AFDC rolls and onto SSI. The federally-funded SSI program pays a higher benefit to the client than state assistance programs, and the state would avoid the costs of carrying these clients on wholly or partially state-funded assistance. Payment of attorney fees out of a lump sum reimbursement received by the client for retroactive benefits would follow the precedent set by federal law in regular Social Security disability appeals. The amount proposed to be spent on attorney fees would be a smart investment for the state, resulting in a net cost savings as well as increased benefits for state residents who are entitled to receive SSI.

For:

The bill contains a three-year sunset provision, which would allow for an evaluation of its effectiveness after a reasonable implementation period.

Against:

The bill should be amended to establish a standard for a "reasonable" attorney fee. Without such a limitation, indigent clients would likely be forced to pay an excessive contingency fee in order to secure representation. Further, the Department of Social Services should be authorized to promulgate administrative rules to establish a basis for paying attorneys, such as requiring a copy of the SSI appeal decision and other documentation to verify the attorney's role in the appeal.

SUGGESTED AMENDMENTS:

The Department of Social Services suggests amending the bill to limit attorneys' fees to either the amount of the reimbursement received by the state, or 25 percent of the lump sum payment of retroactive assistance paid to the recipient, whichever was less (4-7-87).

POSITIONS:

The Department of Social Services would support the bill with its suggested amendment (4-7-87).

The Department of Mental Health has no position on the bill at this time (4-7-87).

H.B. 4197 (4-8-87)