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BILL ANALYSIS

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House Bill 4197 (Substitute S-3 as reported)**Sponsor:** Representative Thomas L. Hickner**House Committee:** Social Services and Youth**Senate Committee:** Human Resources and Senior Citizens**Date Completed:** 10-26-87**RATIONALE**

The Federal Supplemental Security Income (SSI) program pays benefits to people who are indigent and aged, blind, or disabled. Those 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 Dependent Children (AFDC). If a person receiving interim assistance successfully appeals the denial, the State is entitled to reimbursement by the Federal government for the interim assistance. The reimbursement amount is subtracted from 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 for the indigent in the SSI program. The Department of Social Services has an advocacy program to assist its clients in such appeals, but the program's 17 employees are limited in the number of cases they can handle. Some have suggested that the State would receive a worthwhile return on its investment if it paid reasonable attorneys' fees for GA and AFDC clients appealing SSI eligibility, because more conversions from State assistance to SSI assistance might be achieved.

CONTENT

House Bill 4197 (S-3) would amend the Social Welfare Act to require the Department of Social Services (DSS) to pay a "reasonable" attorney's fee on behalf of a recipient of AFDC (Aid to Families with Dependent Children) 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. An attorney's fee could not be paid, under the bill, if the reimbursement resulted from only an initial determination, and could not exceed the amount of reimbursement received by the State. The fee paid under the bill could not exceed the greater of \$500 or 25% of the reimbursed amount for any one proceeding. If the reimbursement to the State were less than \$500, however, the fee paid would have to be equal to the reimbursed amount. The provisions of the bill would be repealed three years after the effective date of the bill, during which time the DSS would have to provide information showing the amount of savings to the State as a result of the reimbursement procedure and demonstrating its cost effectiveness.

Proposed MCL 400.44

SENATE COMMITTEE ACTION

The Senate Committee on Human Resources and Senior Citizens adopted a substitute (S-3) to the bill that specifies

that attorney fees could not be paid for reimbursements resulting only from an initial determination of eligibility. Also, the Senate substitute provides that attorney fees reimbursed by the State would be limited to the greater of \$500 or 25% of the reimbursed amount, unless the reimbursement to the State were less than \$500. In that case, the attorney would have to be paid the entire amount of the reimbursement. Finally, the Senate substitute specifies that the DSS would have to demonstrate the reimbursement program's cost-effectiveness during the three-year period in which the bill would authorize payment of attorney fees.

FISCAL IMPACT

This bill would have an indeterminate fiscal impact on the State. There is no evidence that paying attorneys' fees would increase the number of General Assistance (GA) cases converted to Supplemental Security Income above the number currently achieved through Department of Social Services efforts. Further, there would be some loss to the State due to payment of attorneys' fees.

Please Note: If, contrary to the above analysis, it is assumed that the number of cases converted would increase due to this bill, a savings of \$2,100, GF/GP per case, less attorney fees can be assumed annually after a case is converted.

ARGUMENTS**Supporting Argument**

People who need to appeal a denial of SSI benefits frequently do so without adequate legal representation. Many private attorneys are unwilling to accept SSI appeals 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 possibly could increase the number of successful appeals of SSI denials, resulting in the transfer of people off of the GA and AFDC rolls and onto SSI. The Federally-funded SSI program pays a higher benefit to the client than do 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 with regard to regular Social Security disability appeals. The amount proposed to be spent on attorney fees represents a smart investment

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for the State, possibly resulting in a net cost savings compared to the alternative of continued State assistance, as well as increased benefits for State residents who are entitled to receive Federal benefits.

Response: 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.

Supporting Argument

The bill contains a three-year sunset provision, which would allow for an evaluation of the reimbursement program's cost-effectiveness.

Opposing Argument

If the rationale behind the bill is to offer broad representation to appellants and to secure the most reimbursement dollars possible for the State, then the bill should include nonlawyer representatives within the scope of its reimbursement provision. The Federal rules that allow appeals of SSI benefit denials refer to appellant "representatives" not "attorneys". Reportedly, many appeals of this nature are handled by appellant representatives who are not licensed attorneys. By excluding this group of appellant representatives, the bill would create a favored class and edge some people out of their livelihood. One need not be an attorney to be familiar with the nuances of this appeals process; and simply being a licensed attorney does not guarantee the necessary knowledge and skill to handle such a case. The bill should allow the DSS to generate an approved representative list to allow all qualified representatives to be reimbursed and to preclude those with no expertise in SSI appeals from taking advantage of appellants.

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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.