DEPARTMENT OF UNEMPLOYMENT ASSISTANCE
UI POLICY & PERFORMANCE
INTEROFFICE MEMORANDUM

Date:	Decemember 15, 2021
Classification:	§ 71 Reconsiderations/Redeterminations
Recission(s):	UIPP 2014.02
Reference No.:	UIPP 2021.12

TO: All DUA Managers, Job Service Representatives, Compliance Officers and Call Center Staff

FROM: Emmy Patronick, Director of Policy and Performance

SUBJECT: Redeterminations under Section 71

1. **PURPOSE:**

To provide clarification on redeterminations under Section 71

2. **REFERENCES:**

- G. L. c. 151A, § 71
- 430 CMR §§ 4.30–4.35

3. **BACKGROUND:**

Under G. L. 151A, § 71, the DUA Director "may reconsider a determination whenever he finds that (1) an error has occurred in connection therewith; or (2) wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or (3) benefits have been allowed or denied or the amount of benefits fixed on the basis of misrepresentation of fact; provided, however, that with respect to (1) and (2) no such redetermination shall be made after one year from the date of the original determination; and provided, further, that with respect to (3) no such redetermination shall be made after four years from the date of the original determination….."

Section 71 has two parts. The first part deals with "reconsideration of a determination." A reconsideration under this part of § 71 is referred to as a "redetermination."[1] Redetermination is a process that in certain circumstances, allows determinations to be reviewed when the appeal process is not appropriate or would not resolve the error associated with the determination.

Every time DUA issues a determination on an eligibility issue, that determination is subject to the time limitations for appeals under § 39 and redeterminations under §71. For a claimant to be eligible for benefits, the agency must have determined that the claimant is (1) monetarily eligible for benefits, and (2) that the separation from the most recent employing unit is not disqualifying. The dates for appeal and for redetermination run from the dates those original determinations are made.

DUA does not always issue a written determination. But that does not mean that the issue has not been "determined." For example, if a claimant reports that the separation is due to lack of work, and the employer fails to respond to the lack of work notice, payment is issued to a claimant. In such cases, **payment of benefits** signals that the "eligibility issues" have been "determined" in the claimant's favor, otherwise a written denial is issued. If that eligibility determination later comes into question, the issue would need to be handled under the redetermination procedure, as long as it is less than one year after the original determination.

Redeterminations are not substitutes for timely appeals and can only be initiated where new information indicates that: (1) the claim was approved or denied because of an error; (2) there are newly discovered wages; or (3) the claim was approved or the amount calculated based on a misrepresentation of fact. Redeterminations are only permissible if one of those three criteria apply, unless the issue is an Identity Verification issue, discussed below, and if it has been less than one year after the original "determination" (or four years in the case of a material misrepresentation). Redeterminations are not permitted more than one year after the determination unless there has been a finding of fraud.

If none of these criteria apply, the appropriate avenue for a party to challenge the substance of a determination is a timely appeal. For example, an employer who

[1] The second part of Section 71 relates to reconsidering decisions that were issued by hearings, the board of review or a court. That process is referred to as "reconsideration."

disagrees with a determination that the claimant quit with good cause may file a timely appeal to present testimony and evidence supporting its position that the claimant left voluntarily without good cause attributable to an employer.

If a claimant who is disqualified on an Identity Verification issue for failing to produce sufficient or adequate Identity Verification documentation, later produces sufficient and adequate documentation, the issue should be redetermined if the claimant has passed the appeal period. If the claimant has an appeal pending on the issue, the hearings department may dismiss the appeal and remand to adjudication for redetermination.

An error sufficient enough to support a redetermination may be found only where it is clear that, given the circumstances, a reasonable adjudicator would not have made the same determination or taken the same action. The error may be clerical, mathematical, or technical in nature; or an inadvertent but substantial deviation from the legal and/or regulatory procedures; or where there is no reasonable basis for the finding in the prior determination or decision.

The redetermination procedure requires that payment remain in the same status as the original determination until the issue is redetermined. This means that if the original determination resulted in a payment, those payments cannot stop unless and until a written redetermination is issued, finding the claimant ineligible, or otherwise disqualified. Additionally, the parties to the original determination must be offered an opportunity for an interview and to review and respond to any new information before a redetermination is made.

After the initial determination of eligibility, new issues may arise, for example, about the claimant's availability or ability to look for employment. An issue concerning whether a claimant meets the "able and available" requirement is a weekly determination, and should it arise, it is a new issue on a continued claim, not a redetermination.

A new issue is subject to new fact-finding and a new determination to be issued by an Adjudicator. This new determination is then subject to potential redetermination with its own one- or four-year time limitations under § 71.

4. **ACTION:**

- DUA has one year to reconsider an initial determination under § 71 where the claim was approved or denied because of an error or if there are newly discovered wages, or four years if the initial determination was based on "misrepresentation of fact" (fraud).
- The statute of limitations period begins the date an individual determination is made, whether it is made in writing or reflected by payment.

5. **QUESTIONS:**

Any questions regarding § 71 redeterminations/reconsiderations should be directed to UI Policy and Performance at uipolicyandperformance@detma.org.