

430 CMR 11.00: PROCEDURES FOR NON-MONETARY REDETERMINATIONS UNDER M.G.L. c. 151A, § 71

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11.01: Purpose

The purpose of 430 CMR 11.00 is to promulgate the Department of Unemployment Assistance (DUA or Department) local office procedures governing non-monetary redeterminations of unemployment insurance claims under M.G.L. c. 151A, § 71.

11.02: Scope and Applicability

430 CMR 11.00 applies to all non-monetary redeterminations under M.G.L. c. 151A, § 71, except those pertaining to single party issues. 430 CMR 11.00 is procedural in nature and limited to redeterminations based on non-monetary issues; 430 CMR 11.00 does not establish the substantive grounds for redeterminations and do not apply to redeterminations based on monetary issues.

11.03: Definitions

Determination is a decision made by the Department pursuant to M.G.L. c. 151A, § 39(a) regarding the approval or denial of an issue that affects the past, present or future benefit rights of a claimant.

Issue is a question raised to the Department potentially affecting a claimant's past, present or future benefit rights.

Information Sufficient to Warrant a Review of an Unemployment Insurance Claim for a Potential Redetermination means:

- (a) New information that suggests that a claim was denied or approved due to error; or
- (b) New information regarding the claimant's wages; or
- (c) New information that indicates that a claim was denied or approved, or the amount of benefits fixed, based on a misrepresentation of fact.

New Information means information, either in whole or in part, that was not previously known by the Department or that was unavailable to the party at the time the determination was made.

Nonmonetary Determination is a determination made pursuant to M.G.L. c. 151A, § 39(a) by the Department regarding a separation or non-separation issue based on facts obtained during its investigation of the separation or non-separation issue, respectively. A non-monetary determination may be written or signified by payment.

Redetermination means reconsideration of a determination made pursuant to M.G.L. c. 151A, § 39(a), in connection with an unemployment insurance claim.

11.04: Notice to Claimant

If the Department receives information sufficient to warrant a review of an unemployment insurance claim for a potential redetermination, the Department shall provide the claimant with a written Notice of New Information Affecting your Claim (the "Notice"), which notifies the claimant that there is new information which may affect the claimant's claim for benefits and has the potential to create an overpayment. The Notice shall provide the reason for the review, the start date of the potential overpayment, and information regarding the fact-finding interview process.

11.05: Payment of Benefits Pending Decision on Redetermination

If the claimant is otherwise entitled to benefits, no change to the claimant's benefit payments shall occur unless and until the issue is redetermined.

11.06: Interview with Claimant

The Department shall hold a fact-finding interview if, after the issuance of a determination, a source provides

- (a) new information that indicates that the claim was denied or approved due to error; or
- (b) new information regarding wages; or
- (c) new information that indicates that the issue or issues that were the subject of that determination were denied or approved or the amount of benefits fixed based on a misrepresentation of fact.

Conduct of Interview. During the fact-finding interview, interested parties shall be afforded the opportunity to present evidence with respect to the issue raised, and shall be afforded an opportunity to rebut evidence from other parties. The parties may be interviewed separately or during the same interview at the sole discretion of the Department. If the Department has interviewed the parties separately, the Department may, at its discretion, offer one or both parties an opportunity to further respond.

Waiver of Interview. The right to an interview may be waived by an interested party. The waiver of the right to an interview by one party does not affect the right of the other party to an interview.

11.07: Use of Interpreters at Interviews

A claimant who cannot communicate in and/or comprehend English is entitled to an interpreter during the fact-finding interview and to have the interpreter translate for him or her, in accordance with 430 CMR 4.20.

11.08: Representation at Interview

An agent, legal counsel, or advocate may accompany the claimant to the interview and may represent the claimant at the interview.

11.09: Procedures following Interview

(1) If the Department determines that there is a change in the claimant's eligibility resulting in an approval of benefits that were previously denied, the Department will send the employer any determinations due him or her regarding timeliness and the approval of benefits.

(2) If the Department determines that there is a change in eligibility resulting in a denial of benefits that were previously approved, the Department will issue a redetermination with notice of the right to an appeal under M.G.L. c. 151A, § 39(a). Such decision will become final unless an appeal is filed pursuant to M.G.L. c. 151A, § 39(b).

11.10: Appeals

Appeals from redeterminations issued pursuant to 430 CMR 11.00 through 11.09, inclusive, shall be governed by the appeal procedures set forth in M.G.L. c. 151A, § 39(b) with respect to original determinations.

REGULATORY AUTHORITY

430 CMR 11.00: M.G.L. c. 151A.