

## **Emergency Regulation change to 430 CMR 6.00**

### **EMERGENCY PREAMBLE**

The Director finds that immediate adoption of these regulations is necessary to address the hardship that COVID-19 may cause to workers how were overpaid benefits.

The Director, therefore, also finds that observance of requirements of notice and a public hearing would be contrary to the public interest.

### **6.03: Definitions**

The following words and phrases, as used in 430 CMR 6.03, shall have the following meanings, unless otherwise clearly indicated by the context of 430 CMR 6.00.

Against Equity and Good Conscience means the following:

(1) that recovery of an overpayment will be considered inequitable if an overpaid claimant, by reason of the overpayment, relinquished a valuable right or changed his or her position for the worse. In reaching such a decision, the overpaid claimant's financial circumstances are irrelevant; or

(2) that the overpaid claimant demonstrates to the director that he or she is indigent by presenting documentation showing either (a) current receipt of any of the following Emergency Assistance to Elderly, Disabled and Children (EAEDC) benefits, public assistance under Transitional Aid to Families with Dependent Children (TAFDC), benefits under the Supplemental Nutritional Assistance Program (SNAP), Supplemental Security Income (SSI) benefits or Social Security Disability Insurance (SSDI) benefits combined with SSI, or Veterans' Benefits under M.G.L. c. 115; or (b) income, after taxes, that is 150 per cent or less of the current poverty threshold established annually by the Community Services Administration pursuant to section 625 of the Economic Opportunity Act, as amended.

Claimant means any individual who has filed a claim for unemployment benefits.

Correctness as used in the phrase "correctness of the application of the overpayment" applies to the correctness of the identity of the overpaid claimant whose benefits are being offset, the correctness of the total amount of the overpayment being offset, but does not apply to the amount of the offset chosen by the Department pursuant to 430 CMR 6.04.

Defeat the Purposes of Benefits Otherwise Authorized means that recovery of the overpayment would deprive the overpaid claimant, or individuals dependent on the claimant, of income required for ordinary and necessary living expenses. This depends upon whether the overpaid claimant or his dependents have income or financial resources sufficient for more than ordinary and necessary needs, or are dependent upon all current

income for such needs. Ordinary and necessary living expenses include, but shall not be limited to:

- (a) fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, accident and health insurance, taxes, and work-related transportation expenses;
- (b) medical and hospitalization expenses;
- (c) expenses for the support of others for whom the individual is legally responsible;
- (d) other miscellaneous expenses which may reasonably be considered as part of an individual's necessary and ordinary living expenses.

Fault, as used in the phrase “without fault”, applies only to the fault of the overpaid claimant. Fault on the part of the Department in making the overpayment does not relieve the overpaid claimant of liability for repayment. In determining whether an individual is at fault, the Director, or the Director's authorized representative will consider the nature and cause of the overpayment and the capacity of the particular claimant to recognize the error resulting in the overpayment, such as the claimant's age and intelligence as well as any physical, mental, educational, or linguistic limitation, including lack of facility with the English language. A good faith mistake of fact by the claimant in the filing of a claim for benefits that results in an overpayment of benefits does not constitute fault. A claimant shall be at fault if the overpayment resulted from the claimant:

- (a) furnishing information that the claimant knew, or reasonably should have known, to be incorrect; or
- (b) failing to furnish information that the claimant knew or reasonably should have known to be material; or
- (c) accepting of a payment that the claimant knew, or reasonably should have known was incorrect.

Overpaid Claimant means any person who has been determined to have received an overpayment of unemployment benefits.

Overpayment means any amount of unemployment benefits the amount of which it has been determined that a person has received in excess of that which he, or she, was entitled to under the applicable law.

Unemployment Benefits means any monetary payment of benefits, including dependency allowances, which are,

- (a) made pursuant to M.G.L. c. 151A, and intended to replace income lost by reason of unemployment, or
- (b) made under Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, Federal Extended Benefits, Federal Pandemic Unemployment Compensation, Lost Wages Assistance and Mixed Earner Unemployment Compensation, but excluding benefits under Disaster Unemployment Assistance, or
- (c) made through the Department pursuant to some other state or federal law which authorizes the Department to waive recovery of overpayments. 430 CMR 6.00

applies to benefits described in 430 CMR 6.03(1)(b) to the extent that they are not inconsistent with any standards or procedures which may be established by the law under which the benefit payments are made.

#### **6.04 : Recovery of Overpayments**

(1) The Department may recover overpayments by commencing civil actions or, in the discretion of the Commissioner, overpayments may be offset against current or future payments of unemployment benefits to which the overpaid claimant is entitled. If the Department chooses to recover the overpayment by offset, the amount of the offset is presumed to be 100% of the current or future weekly benefit entitlement. Provided, however, the Department may offset an amount which is less than the full benefit entitlement. In determining the amount to be withheld from current or future unemployment benefits, the Department shall take into consideration the following factors:

- (a) the financial circumstances of the overpaid claimant and his family;
- (b) the amount of the overpayment;
- (c) the degree of fault of the claimant with respect to the overpayment;
- (d) the level of unemployment benefits to which the claimant is entitled, and;
- (e) the availability or lack of other sources of financial support for the claimant or his family.

The claimant shall not have the right to appeal from the determination of the amount to be withheld from current or future unemployment benefits.

(2) An overpaid claimant may request the Department to adjust either the amount of benefits being offset, or the amount of a repayment schedule. In determining whether to grant such an adjustment, the Department shall take into consideration the factors specified in 430 CMR 6.04(1). The claimant shall not have the right to appeal from any such adjustment or any refusal of an adjustment.

#### **6.05: Waiver of Recovery of Overpayments**

(1) No overpayment shall be recovered when, in the judgment of the Commissioner or his authorized representative, the claimant is without fault on his or her part and where recovery of the overpayment would either defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. Fault on the part of the Department in making the overpayment does not relieve the overpaid claimant from liability for repayment if such individual is not without fault.

(2) In any proceedings under these regulations, the overpaid claimant shall have the burden of proving entitlement to a waiver.

(3) Special Relief for Pandemic Overpayments. Individuals who were overpaid unemployment benefits through no fault of their own for weeks in 2020 and 2021, and who

request waivers of such overpayments, shall be presumptively entitled to waivers in the following circumstances:

(a) where the department awarded unemployment benefits and subsequently detected a nonmonetary issue affecting eligibility for benefits but failed to issue a determination regarding that issue within 21 days after the department had initially detected the issue; or

(b) where the department initially awarded unemployment benefits but reversed the award in whole or part after an appeal or protest that was filed more than 30 days after the initial award; or

(c) where the state overpayment is due to the suspension of lack of work notices during the period from March 20, 2020 to June 22, 2020; or

(d) where the individual applied for PUA benefits prior to March 23, 2021, when the department provided notification that required PUA claimants to submit documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment, and the individual thereafter failed to submit such documentation.