

## DUA ADVISORY COUNCIL MEETING December 21, 2017

### MINUTES

The meeting started at 9:30 am.

**Council Attendees:** Richard Marlin, Ellen Wallace, Peter Russell, Katherine Holahan and Brenda Wornum Moore

**EOLWD/DWD/DUA/Public Attendees:** Rick Jeffers, David Guberman, Rena Kottcamp, Eileen O'Rourke, Jennifer Lavin, Marie-Lise Sobande, Wendy Savary, Jeannie Pena, Paul Fitzgerald, Brian Flynn (GBLS), Jessica Muradian, (EOLWD), Marie Orlando (DUA)

#### I. EXECUTIVE UPDATE: Director, Rick Jeffers

Director Jeffers welcomed and introduced new council members Katherine Holahan and Brenda Wornum Moore.

A quorum was established – Rich Marlin motioned to approve minutes from meetings in October 15, 2015, January 21, 2016, April 21, 2016, June 16, 2016, March 2, 2017 and June 15, 2017, Peter Russell seconded the motion and all were in favor of approving the minutes.

- Director Jeffers presented a review of DUA. Key points include:
  - Benefits and Call Volume for w/e 12/9/17
    - 91,973 for Total Active Claimants
    - \$26,002,398 in Total Weekly Payments
    - \$1,431,966,543 in Payments year to date
  - Call Volume is down for w/e 12/9/17 which was 9,980 with Average Speed of Answer of 17:49.
  - First Payment Promptness;
    - 87% or more of first benefit payments are expected to be disbursed within 21 days
    - Federal metric continues to improve.
  - Non-Monetary Determinations Timeliness;
    - 80% of non-monetary determinations need to be made within 21 days
    - Have not hit 80%
  - Lower Authority Appeals in DUA Hearings Department;
    - Timeliness Measure for Lower Authority Appeals requires average age to be 30 days or under
    - having staffing issues
    - within 30 days – the goal is 60%
    - within 45 days – the goal is 80%
  - Lower Authority Appeals Decisions – 52% In favor of Employers & 48% in favor of Claimant
  - Higher Authority Appeals;
    - Meeting the Federal metric. Board of Review continues to improve by working down their pending case load and case aging.
  - Revenue Department;
    - Overpayments: Fraud vs. Non Fraud Overpayments Detected
    - 2017 vs 2016 DUA is doing a better job of detecting
    - **Brian Flynn** asked if the fraud was solely on wage information or separation. **Director Jeffers** answered there are several cross matches. **Rena** said the majority of fraud is working and collecting and being out of the country. Some employee schemes are they are working full time and reporting they are working 2 days a week, also the work search stating they are able and available and they are not.

- **Rich Marlin** states he has been getting calls from members who have gone to work for 2-3 days and getting disqualified.
  - Jen Lavin replied: If they earn over their benefit amount plus 1/3 it would shut the claim down and have to reopen. As long as it's a lack of work it should only take 8-10 days if employer is timely.
- **Rich Marlin** requested a zone listing of distances for out of state/commuter claims.
  - Rena will follow-up
- DUA migrated to the Cloud in November 17, 2017. Very Successful.
- 2018 Rate Notices are being sent out December 22, 2017.
- Continuing to focus on EMAC Supplements. **Kate Holahan** asked about the threshold for the application for the supplement. **David Guberman** answered there are 2 thresholds and then a calculation. The first threshold is an employer has to have more than 5 employees to be potentially liable then they are liable for each employee with getting benefits with Mass Health for 56 days or more. In order to be liable for 3 employees each would have to meet the criteria. **Rich Marlin** asked for construction purposes how do you determine an employee given the fact that they have contracted to have someone on the books for 30 days, 60 days and all year with 100 different people on the books. If someone is on the books for 1 day...**Jess Muradian** answered they have to make at least \$500.00 and be on Mass Health.
- Review of the role of the Advisory Council: The Council is made up of 6 people consisting of two representing employees, which are Rich Marlin and Ellen Wallace, two representing employers, which are Kate Holahan and Kirsten Siemering and two representing the general public, which are Peter Russell and Brenda Wornum Moore. As far as legal authority MGL 23 Section 9N the council is responsible for nominating the panel for the Board of Review, changes to Regulations, and the council can compromise employer debt. There is also a \$40 compensation for attending the meetings including travel and other necessary expenses.
  - Marie Orlando can send you forms.

## II. UI TRUST FUND UPDATE: Rena Kottcamp

- Estimates for the Labor Force newest jobs numbers: the Commonwealth added 6700 jobs last month and YTD 62,200 jobs. The fastest growing sector is construction and strong growth in manufacturing. **Kate Holahan** asked what type of manufacturing? **Rena** said for these estimates we have durable and non-durable goods. In this particular month, 1300 of the growth is durable goods. Rich Marlin said there is an explosion in construction and off-site fabrication so would a fabrication facility be listed as construction or manufacturing? Rena said it depends and will look into it. It could be under construction. **Brenda Wornum Moore** asked out of the jobs added last year how many were in retail. **Rena** said retail trades are down including online pieces. Health care and Social Services remains strong. Private healthcare estimates for this month is 636,000 jobs. This recession and the prior recession, Health & Social Services has never lost jobs.
- Unemployment Rate is 3.6%
- Preliminary November 2017 Massachusetts UI Trust Fund balance was \$1.064 billion. The preliminary private contributory account balance was \$953 million and the governmental contributory account balance was \$111 million
- Average weekly benefit amount in November 2017 was \$506.57, \$5.58 or 1.1% more than the November 2016 average amount of \$500.99.
- The 17.3 week average duration of a claim through November 2017 is 0.3 week shorter than the average duration for the same time span in 2016. Average duration is computed on a twelve month moving average.
- Total preliminary benefit payments of \$1.250 billion through November 2017 were \$46 million higher than total payments made January to November 2016 and \$2.1 million more than the latest projection.
- Through November 2017 Preliminary Employer Contributions of \$1.352 billion were \$57 million more than last year's first eleven months collections and \$6.8 million higher than projected.
- November 2017 private contributory account balance of \$953 million was \$9 million lower than the latest projected. The 2017 year end private contributory account balance remain estimated at \$839 million.

### III BOARD OF REVIEW MEMBER SUB COMMITTEE

- **Paul Fitzgerald**, Chairman of the Board of Review spoke on the role of The Board of Review (BOR). It is the higher appeals authority in DUA. It is the final appeal authority within the DUA. After you have exhausted your appeal at the BOR you must go to district court. Anyone who is aggrieved by the decision made by the Hearings Department has the right within 30 days of the date of the decision to file an appeal with the BOR. Under the law the BOR must decide whether or not it accepts jurisdiction on that appeal within 21 days of the file date. There are 5 staff attorneys who review the recording of the hearing and review the record and review the appeal we work up a case recommendation and 2 board member must vote on every appeal. If we believe that the decision of the Hearings Department was correct, we would deny the appeal and the decision of the Hearings Department is the final decision of the Agency. If we believe the hearing officer got it wrong, we can do one of three things; we can remand it back to the Hearings Department for an additional evidence hearing or remand it back to ask the review examiner to reopen the record and make a subsidiary findings or if we believe the hearings decision can't stand we can de novo it and send it back down for a totally new hearing or we can reverse it on the record we have before us, or we can hold a hearing ourselves. Once we have taken jurisdiction over the appeal we have to issue some type of a decision on it. If we remand it for an additional hearing for a subsidiary finding, once that hearing is conducted and subsidiary findings are made, called consolidated findings, they are returned to the Board and we issue a written decision as the final decision of the Agency. Another specialized hearing is when there is a labor dispute in the Commonwealth and people file for unemployment, whoever is aggrieved can come to the Board for a first instance hearing.
- The BOR is a 3 member panel with 1 vacancy since July 2017. The Advisory Council follows a process and appoints a sub-committee who votes to conduct its meeting in Executive Session and then interviews the candidate pool and reports back to the whole board in open session with their recommendations, which are then forwarded to the Governor and the Governor chooses. In order for the Governor to choose a member this council has to deem them qualified and recommend. **Director Jeffers** went on to say the sub-committee is made up of EOLWD General Counsel, Mike Doheny, DUA Director, Rick Jeffers and two Advisory Council Members, one who represents the employers and one who represents the employees. **Director Jeffers** stated he hopes to accomplish and make a decision to follow that process again. **Rich Marlin** asked about putting the ad for posting position. **Director Jeffers** said the position was already posted and applicants have applied. The sub-committee member would review the applications and after receiving two votes from the sub-committee, they would be invited for an interview. Following what was done in the past, the Advisory Council would vote to delegate the screening of applications to a nominated sub-committee and would meet in executive session.
  - **Rich Marlin** motioned to start the process to elect a sub-committee - all voted in favor.
  - **Peter Russell** nominated Rich Marlin for sub-committee member and **Rich Marlin** nominated **Katie Holahan** - all voted in favor.
- **Rich Marlin** asked about Section 30 and if a vote is needed for a public hearing.
  - **David Guberman** stated prior practice is to bring proposed regulatory changes to the council, get input and sometimes make changes to the proposal and council approves them for circulation to the public. There is a public hearing, comment is received and then comes back to the council for final adoption.
  - **Rich Marlin** asked if the Regulations could be put on the agenda to get the public hearings part started. **Director Jeffers** said there are parts that were already agreed to. **Rich Marlin** asked if Section 30 could be explained to the new members. **Director Jeffers** continued that 430 CMR 9:00 Training Opportunity Bill can be found on the website. Basically DUA will waive the work-search requirement so the claimant can attend an approved training program. **David Guberman** added that the basic statutory principal is if we determine that a claimant is in need of training in order to get appropriate employment then they are entitled to attend a training program that we approve. Someone in an approved training doesn't have to look for a job or accept an offer for employment while attending an approved training program. Paul Fitzgerald added that they also receive 26 additional weeks of unemployment benefits as long as they continue in the program.
- **Director Jeffers** asked if there was any other concerns and Rich Marlin motioned to adjourn and Ellen Wallace seconded.
- Next meeting is scheduled for January 18, 2018