

430 CMR: DIVISION OF UNEMPLOYMENT ASSISTANCE

430 CMR 6.00: WAIVER REGULATIONS

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6.01: Purpose

The purpose of 430 CMR 6.00 is to establish procedures and interpret the standards for waiver of recovery of overpayments of unemployment benefits, and to establish procedures for appealing the correctness of the application of an overpayment, in accordance with M.G.L. c. 151A, § 69.

6.02: Scope and Applicability

430 CMR 6.00 apply to any person who has been found to have received an overpayment of unemployment benefits.

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 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.

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.

6.03: continued

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 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 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) Waiver requests shall be granted or denied in accordance with the following examples:
- (a) The overpayment is found to be attributable to fault on the part of the claimant and recovery would be against "equity and good conscience" or would "defeat the purpose of benefits otherwise authorized". The request for waiver is *denied*.
 - (b) An overpaid claimant is found to be without fault as regards the overpayment, and;
 1. Recovery would be "against equity and good conscience" but would not "defeat the purpose of benefits otherwise authorized". The request for waiver is *granted*.
 2. Recovery would not be "against equity and good conscience", but would "defeat the purpose of benefits otherwise authorized". The request for waiver is *granted*.
 3. Recovery would not be "against equity and good conscience", nor would recovery "defeat the purpose of benefits otherwise authorized". The request for waiver is *denied*.

6.07: Notice of Right to Request Waiver

- (1) At such time as a determination or redetermination regarding an overpayment is issued, or whenever a new claim is filed by a claimant from whom the Department intends to recover an outstanding overpayment by offset, the overpaid claimant shall be notified in writing of his or her right to request a waiver of recovery. The notice shall include, but not be limited to:
- (a) the amount of the overpayment;
 - (b) a brief explanation of the means available to the Department for recovery of the overpayment;
 - (c) an explanation of the overpaid claimant's right to request waiver of recovery, including an explanation of the standards which govern the waiver determination and the procedures through which waiver may be requested, and;
 - (d) notice that no collection efforts will be commenced by the Department and no current or future benefits will be withheld to offset the overpayment until at least 15 days after the date on which the notice is mailed or delivered in hand, or if the overpaid claimant requests a waiver, until after the waiver request has been considered and finally denied.

If the determination or redetermination is issued in hand, the claimant shall, if a waiver is requested at that time, have the opportunity to present evidence to the Commissioner or his authorized representative on the issue of whether the overpayment shall be waived. If the determination or redetermination is issued by mail, the claimant shall have the right to request a waiver, and the Commissioner or his authorized representative shall promptly arrange for the claimant to have the opportunity to present such evidence. A waiver request may be filed at any time and shall be promptly considered by the Department.

- (e) An overpaid claimant may voluntarily elect to relinquish his or her right to appeal a redetermination and/or to request a waiver of overpayment, and elect to have recoupment commence immediately. The overpaid claimant shall be informed of his or her right to appeal and his or her right to request a waiver prior to any such election. The election shall be confirmed in writing before it becomes effective. A claimant who so elects shall not be barred from filing a later waiver request with respect to the same overpayment.

6.08: Determination on Waiver Request

- (1) After a request for waiver is received, the Commissioner or his authorized representative shall promptly determine, in accordance with the procedures established by the Commissioner, and after making such inquiries and investigations as he deems necessary, whether or not the waiver request will be granted. If the determination is to deny waiver, the written notice to the person of the determination shall conform to 801 CMR 1.02(6): *Initiation of Adjudicatory Proceedings* and shall include:

6.08: continued

- (a) a finding on each element of M.G.L. c. 151A, § 69(c), specifically, "fault", "against equity and good conscience", and "defeat the purpose of benefits otherwise authorized". Provided, however, that if the waiver request is denied on the ground that the overpaid claimant was at "fault", findings on "against equity and good conscience" and "defeat the purpose of benefits otherwise authorized" will not be made;
- (b) the amount of the overpayment;
- (c) an explanation of the overpaid claimant's right to request a hearing on the denial, and the time limits and procedures for requesting such a hearing, and;
- (d) an explanation that the overpaid claimant may present any evidence in support of his or her request for waiver at such a hearing, including, but not limited to, evidence which was not presented at the waiver determination interview, and evidence relating to any issue on which no finding was made.

(2) Redeterminations under M.G.L. c. 151A, § 71 and determinations on waiver requests shall, to the extent practicable, be issued simultaneously.

6.09: Hearing Procedures for Waiver Denials

An appeal from the denial of a waiver request shall be filed within the time allowed for other appeal requests under M.G.L. c. 151A, § 39.

6.10: Effect of Denial of Waiver

A denial of a waiver request which has become "final" (as defined in 430 CMR 6.12) shall bar any later request for waiver with respect to the same overpayment unless:

- (a) the initial waiver request was denied for the reasons specified in 430 CMR 6.05(3)(b)3. and;
- (b) the basis for the later waiver request is that the overpaid claimant's circumstances have so changed that recovery at that time would defeat the purpose of benefits otherwise authorized.

6.12: Initiation of Recoupment

(1) No collection efforts will be commenced by the Department and no current or future unemployment benefits will be withheld to offset an overpayment until the determination, redetermination, or decision issued pursuant to M.G.L. c. 151A, § 71 has become "final". Said determination, redetermination, or decision is not "final" until the overpaid claimant has exhausted all levels of administrative and judicial review or has failed to request review at the next applicable level within the time allowed by law. A determination or decision on a waiver request becomes "final" within the meaning of 430 CMR 6.00 when the overpaid claimant has exhausted all levels of administrative review.

(2) Recoupment shall commence after the determination, redetermination or decision issued pursuant to M.G.L. c. 151A, § 71 becomes final, unless the overpaid claimant has, within 15 days after notice of his or her right to request a waiver, has requested a waiver. If no request for waiver has been filed during the 15 day period, or if the overpaid claimant has made an election pursuant to 430 CMR 6.07(1)(e), the Department shall commence recoupment until such time as a waiver request is received.

(3) Upon receipt of a waiver request, the Department shall cease any recoupment activity previously initiated until such time as a determination or decision on the waiver request becomes final, at which time recoupment shall continue.

6.13: Substantive Appeals on Redeterminations

430 CMR 6.00 shall not be construed as an alternate method of appeal of substantive issues regarding the overpayment.

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6.14: Offset of Overpayment

If no waiver request is made, or if a waiver request has been made and denial of the request has become final, the Department may commence offsetting the overpayment against current or future unemployment benefits in accordance with 430 CMR 6.04. The overpaid claimant shall have the right to appeal the correctness of the application of the overpayment pursuant to the procedures established in 430 CMR 6.08, 6.09, 6.10 and 6.11, and shall be given notice of that right. The Department shall cease recovery activity at such time as a request for review of the correctness of the application of the overpayment is received. Provided, however, recovery activities shall commence or continue at such time as a determination on the correctness of the application of the overpayment is rendered pursuant to the procedures established in 430 CMR 6.08.

6.15: Actions in Furtherance of Criminal Prosecutions

Nothing contained herein shall be construed so as to limit or otherwise constrain any actions taken by the Department of the Attorney General in furtherance of criminal prosecutions.

REGULATORY AUTHORITY

430 CMR 6.00: M.G.L. c. 23, § 9J; c. 30A, § 2.

NON-TEXT PAGE