

May 14, 2021

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Testimony before the Workforce, Trades, and Talent Committee Regarding HB 4434: Plain Language

My name is Rachael Kohl. I am the Director of the Workers' Rights Clinic at the University of Michigan Law School. I have handled thousands of unemployment insurance cases, and I have helped over 5,000 Michiganders since the start of the pandemic in March of 2020. The Unemployment Insurance Agency's (UIA) determinations have been flawed for years. During the False Fraud Scandal,¹ the UIA failed to give any specific factual details explaining the basis for the computer's (often baseless) decision. Unfortunately, the UIA has not improved on its communication despite this history of issues.

HB 4434 is a good start to help claimants and employers better navigate the UIA's system, but it will likely not do enough to actually make the UIA change its practices. The UIA will claim that they already abide by the requirements from this bill, including using "plain language" that includes "clear, concise and factual reason for the determination or redetermination" and the appeal rights. However, as many legislators know in trying to help their constituents, the UIA's attempt to meet these basic due process requirements often leaves claimants and employers confused regarding the status of the claim. Given that HB 4434 requires that UIA communication be at a 4th Grade Reading Level, this may be the most important part of the bill since it is the only addition that will force the UIA to review and update its language.

Attachment 1 shows one recent example of the UIA's complicated communication style. In this attachment, it is a determination from the UIA for a case where the UIA believes that the claimant has been overpaid. It is improperly labeled as "misrepresentation" but also later explains that they are "not disqualified" and makes no finding whatsoever regarding "misrepresentation." Because they are not disqualified, it is confusing whether they need to appeal. It also explains that the claimant was paid at a higher weekly benefit amount than they were entitled. But it doesn't explain how that decision regarding their weekly benefit amount was reached. That is because, in fact, there is a completely separate decision that dictates this UIA determination regarding a lower/eliminated weekly benefit amount – See Attachment 2. In order for the claimant to know why the UIA sent Attachment 1, they would have to piece together that it is related to Attachment 2 – despite that none of this is listed in either of the decisions. Further, in order to get these issues resolved, the claimant needs to appeal both of the decisions within 30 days or it becomes final.

¹ This scandal involved the UIA allowing its computer system, MiDAS, to make decisions about claims without any human intervention. MiDAS, programmed and overseen by people still with the UIA, generated over 60,000 baseless fraud determinations to innocent Michiganders for over two years. They claimants were told only this: "Your actions indicate that you misled and/or concealed information to obtain benefits that you were not entitled to receive." Nothing more. Nothing particular to the individual's case. Just the same boilerplate information for all 60,000 determinations.

It is important to note that the practice of sending out multiple decision notices has not always been standard UIA practice. Before the implementation of MiDAS, the computer program that the UIA still uses that wrongly charged tens of thousands of Michiganders of fraud at a 93% error rate, the UIA used to send determinations that put all related decisions about the claim in one document. After implementing MiDAS, the UIA now splits up every decision into many different determinations, even if they are related and about the same, single claim for benefits.²

The Michigan Employment Security Act is a complicated piece of legislation. This complexity leads to many different pitfalls that can create the basis for a denial for claimants.³ The UIA has a responsibility to clearly explain these decisions. Instead, the UIA's process of splitting up its decisions into many (seemingly unrelated) determinations only further complicates this confusing system despite that the claimant has only filed one claim. The UIA needs to ensure that the claimants and employers are aware of what is going on in the overall status of their claim. The Legislature should consider bolstering this bill to:

1. Add language to ensure that the UIA's determinations are not split up into many confusing decisions
2. Require that the UIA cite specific facts particular to the claimant's case, not just boilerplate language that the computer auto generates for all claimants.
3. Require that the UIA put all related cases in the same decision so claimants understand the full basis of the UIA's denial
4. Require that the UIA provide appeal rights that accurately explain that the claimant has to appeal all decisions against them and provide a list of what current decisions are causing the claimant's benefits to be denied

Alternatively, the Legislature can reduce the amount of eligibility and other red tape requirements so that the UIA can eliminate some of its confusing practices. Any of these additions would greatly help claimants and employers understand what is happening in their claim.

Thank you,

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² It is possible that the UIA made this decision to split up all of its decisions because the UIA gets more federal funding if it generates additional claims, which it does through additional "case numbers" despite it just being about one single claim for benefits.

³ See Attachment 3 and 4 – two decisions sent to a claimant. One day, the claimant received a determination that they were disqualified. Two days later, they received a decision that they were not disqualified. Thinking that the UIA fixed an error in the first decision, the claimant did not appeal it. But because the Act requires that UIA make a decision about all employers in the claimant's base period, that decision actually did disqualify the claimant even though there was another decision stating the opposite. I also have had clients that have received more than 50 determinations from the UIA all at once all stating conflicting things. This practice is not tenable for laypeople to navigate on their own.



ATTACHMENT 1

[Redacted]

Mail Date: [Redacted]
Letter ID: [Redacted]
CLM: [Redacted]
Name: [Redacted]

Notice of Determination

Case Number: [Redacted] BYB: [Redacted]
Claimant: [Redacted] Claimant SSN: [Redacted]

Issue: Misrepresentation Section of the Act: 62(b)

Eligibility for Unemployment Benefits

Issues and Sections of Michigan Employment Security (MES) Act involved: Misrepresentation and 62(b). You received benefits for weeks ending July 25, 2020 through August 29, 2020 resulting in an overpayment of benefits. Benefits were paid to you based on a higher weekly benefit amount (WBA) and/or a higher weekly benefit entitlement.

Based on new or additional information your WBA and/or weeks of entitlement has been reduced. You received excessive benefits for the period shown resulting in an overpayment.

You are not disqualified for benefits under MES Act, Sec. 62(b). Restitution is established under MES Act, Sec. 62(a).

If applicable, principal and penalty amounts are shown on Form UIA 1301, Weeks of Overpayments. If you disagree with this Determination, refer to "Protest Rights" on the reverse side of this form. The protest must be received no later than 12/17/2020.

UIA is an Equal Opportunity Employer/Program.

Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.



Penalties

It is against state law to intentionally make false statements or conceal material information to gain or avoid the payment of benefits. You may have to repay up to 1.5 times the amount of benefits received. Benefits will be stopped, and any remaining benefits will be lost. You may also be subject to criminal prosecution. If prosecuted, you may be required to pay court costs and fines, face jail time, perform community service or any combination of these.

Protest Rights

If you disagree with this determination you have the right to protest requesting a redetermination. Your protest must be received within 30 calendar days from the mail date of this redetermination. If your protest is filed after the deadline, you must include the reason your protest is late in your statement. You can also attach copies of any documents that support your protest.

You can submit your protest online at www.michigan.gov/uia through your Michigan Web Account Manager (MiWAM) and upload documents. If you wish to protest in writing, complete Form UIA 1733, *Protest of a Determination*. This form is located on the website under the Forms link. Include your name, case number and social security number or Michigan Identification Number (MIN) on documents submitted with your protest. Fax the completed Form UIA 1733 and any supporting documents to 1-517-636-0427 or mail to Unemployment Insurance Agency, P.O. Box 169, Grand Rapids, MI 49501-0169. If you fax or mail your protest, it must be signed.

Your protest must be received no later than 17-Dec-2020 or this determination becomes final.

In accordance with the provisions of the MES Act, benefits payable because this determination will be paid, even though a protest may be filed later. **However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you may be required to repay the benefits improperly received.**

If you protest, protect your rights by continuing to certify for benefits. You may report online through your MiWAM account 24 hours a day during your reporting week at www.michigan.gov/uia, or report by calling MARVIN at 1-866-638-3993, Monday through Saturday, 8:00 a.m. to 7:00 p.m. If you go back to work, report this fact when you certify. You must report all work and gross wages from all sources, even if you have not yet been paid.

If your address changes it is important to update it with Unemployment Insurance.

If you have questions, contact UIA Customer Service at 1-866-500-0017, from 8 a.m. to 4:30 p.m. Monday through Friday. TTY customers use 1-866-366-0004.

English

IMPORTANT! This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

IMMEDIATELY: If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

Spanish

¡IMPORTANTE! Este documento (s) contiene información importante sobre sus derechos, responsabilidades y / o beneficios de compensación de desempleo. Es fundamental que comprenda la información de este documento.

INMEDIATAMENTE: Si es necesario, llame al 1-866-500-0017 para obtener ayuda en la traducción y comprensión de la información en el (los) documento (s) que ha recibido.

Arabic

أ. "هام! يحتوي هذا المستند (المستندات) على معلومات هامة عن حقوقك الخاصة بتعويضات البطالة، ومسؤولياتك و/أو مخصصاتك، ولذلك فمن المهم جدًا أن تفهم البيانات الواردة في هذا المستند.
على الفور: إذا كنت بحاجة إلى مساعدة اتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقيتها!"

Bengali

- গুরুত্বপূর্ণ এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে গুরুত্বপূর্ণ সূচনা দেওয়া আছে। এটা গুরুত্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেন।
- আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।"

Mandarin

重要提示!

这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即：如果需要，请拨打1-866-500-0017，可获得帮助，以帮助您翻译和理解所收到的文件中的信息。

Albanian

- E RËNDËSISHME! Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e kompensimit të papunësisë. Është e rëndësishme që ju të kuptoni informacionin në këtë dokument.
- MENJËHERË: Nëse është e nevojshme, telefononi 1-866-500-0017 për ndihmë në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.



ATTACHMENT 2



Mail Date:
Letter ID:
CLM:
Name:



PANDEMIC UNEMPLOYMENT ASSISTANCE MONETARY DETERMINATION

Dear

Your claim for Pandemic Unemployment Assistance (PUA) was filed on 21-Apr-2020.

Based on information provided, it is determined that you do not meet the PUA eligibility requirements for the following reason(s):

You have not established that your separation reason is COVID-19 related.

This determination is effective beginning 15-Mar-2020.

Claim Information

- Benefit Year Beginning (BYB): 15-Mar-2020
- Weekly Benefit Amount 0.00

PUA Monetary Determination Calculation

Your weekly benefit amount was calculated based on the income amount you provided. If you did not provide any income, you received the minimum PUA weekly benefit amount of 160.00. If you provided income but did not provide proof of that income during your claim filing, you are required to submit proof within 21 days of the mail date of this determination. If you do not provide proof of income you have certified to, your weekly benefit amount will be reduced to the minimum of 160.00 payment per week. Proof of income includes but is not limited to the following:

- Prior year's (2019) 1099
- Prior year's (2019) Federal Tax Return
- Final pay stub in 2019
- Current 2020 pay-stubs
- Self-employment invoices or bills
- Other authentic proof of income earned

If you did not provide any income and received the minimum weekly PUA benefit amount of 160.00 you have until December 26, 2020 to provide proof of income to increase your benefit amount up to a maximum amount of 362.00 per week.

A quarterly evaluation will run to determine if you are eligible to file a new claim for regular benefits. If you are eligible for a new claim, you will no longer be eligible for PUA. Your PUA benefits will be stopped and you will be notified to file a new claim. You must file the new claim regardless of whether your benefit amount on the new claim is less than what you were receiving in PUA benefits.

Bi-Weekly Certifications

You must certify your eligibility every two weeks to receive payment. To certify, log into your Michigan Web

UIA is an Equa Opportun ty Emp oyer/Program.

Aux ry a ds, serv ces and other reasonab e accommodat ons are ava ab e upon request to nd v dya s w th d sab tes.



Account Manager (MiWAM) at www.michigan.gov/uia. Your first certification should be done online anytime between 03-May-2020 and 09-May-2020 and then every two weeks thereafter. Your online account is accessible seven days a week and 24 hours a day. If you do not have a MiWAM, you can create one online at www.michigan.gov/uia.

You may also certify by phone. Call 1-866-638-3993, Monday through Saturday, 8:00 AM until 7:00 PM Eastern Time on your regularly scheduled week.

Protest Rights

If you disagree with this determination you have the right to protest requesting a redetermination. Your protest must be received within 30 calendar days from the mail date of this redetermination. If your protest is filed after the deadline, you must include the reason your protest is late in your statement. You can also attach copies of any documents that support your protest.

You can submit your protest online at www.michigan.gov/uia through your Michigan Web Account Manager (MiWAM) and upload documents. If you wish to protest in writing, complete Form UIA 1733, *Protest of a Determination*. This form is located on the website under the Forms link. Include your name, case number and social security number or Michigan Identification Number (MIN) on documents submitted with your protest. Fax the completed Form UIA 1733 and any supporting documents to 1-517-636-0427 or mail to Unemployment Insurance Agency, P.O. Box 169, Grand Rapids, MI 49501-0169. If you fax or mail your protest, it must be signed.

Your protest must be received no later than December 18, 2020 or this determination becomes final.

Under provisions of the Michigan Employment Security (MES) Act, benefits determined payable will be paid even though another appeal may be filed later. However, if the appeal later determines that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

Contacting Us

There are several ways to contact us with questions regarding your claim.

ONLINE: Visit www.michigan.gov/uia and log into your MiWAM account.

BY PHONE: Call 1-866-500-0017, For telephone hours of operation, visit www.michigan.gov/uia. TTY customers use 1-866-366-0004.

IN WRITING: Fax correspondence to 1-517-636-0427 or mail to Unemployment Insurance Agency, P.O. Box 169, Grand Rapids, MI 49501-0169. Include the date, your name, Social Security number, and signature on all correspondence. Retain a copy for yourself. Print and keep the confirmation that your Fax was received.

Your information, including but not limited to Social Security Number and Driver's License Number, may be verified through computer matching programs and shared as authorized by law.

If there is a question regarding the identify of the claim filer, UIA may conduct fact-finding by contacting the filer at the number provided on the claim. If there is no immediate response, the claimant will have 48 hours to return the call. If no response is received, a determination regarding identity will be made based on the information.

If your address changes, it is important to update it with the Unemployment Insurance Agency.

Information you provide to the UIA may be subject to disclosure in accordance with federal and state law requirements.

PUA benefits are subject to Friend of the Court deductions.

UIA is an Equal Opportunity Employer/Program.

Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.



English

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Bengali

- গুরুত্বপূর্ণ: এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে গুরুত্বপূর্ণ সূচনা দেওয়া আছে। এটা গুরুত্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেবেন।
- আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।

Mandarin

重要提示!

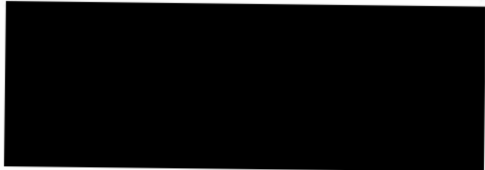
这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即: 如果需要, 请拨打1-866-500-0017, 可获得帮助, 以帮助您翻译和理解所收到的文件中的信息。

Albanian

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- MENJËHERË: Nëse është e nevojshme, telefononi 1-866-500-0017 për ndihmë në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.



ATTACHMENT 3



Mail Date:
Letter ID:
CLM:
Name:



Notice of Determination

Case Number:
SSN:
Claimant:



BYB:
Employer Number:
Involved Employer:



2016

Issues and Sections of Michigan Employment Security (MES) Act involved: Voluntary Quit and 29(5).

You quit your job with [redacted] on August 31, 2016 to accept new employment.

You were hired for full-time work. You worked for both employers concurrently for ten days or more. Your leaving was without good cause attributable to the employer.

You do not meet the leaving to accept requirements under MES Act, Sec. 29(5). You are disqualified for benefits under MES Act, Sec. 29(1)(a). Rework begins with week ending September 10, 2016. You will not receive benefits until you satisfy the rework requirement.

Rework Requirements: Claimant is disqualified until completion of a \$3,780.00 earnings rework requirement which has been satisfied.

Pursuant to Section 20(a) if an employer has established a pattern of failing to provide timely or adequate information in response to Agency requests for the purpose of making proper adjudications of claims/issues; the employer's account will not be credited for benefits paid prior to the date that the protest providing timely or adequate information was received.

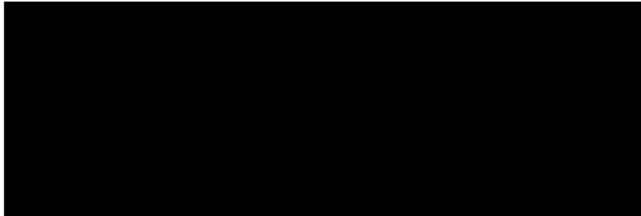
Calculation of interest and penalty amount is shown later on this form.

If you disagree with this determination, refer to "Protest Rights" on the reverse side of this form.

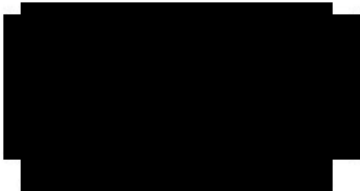




ATTACHMENT 4



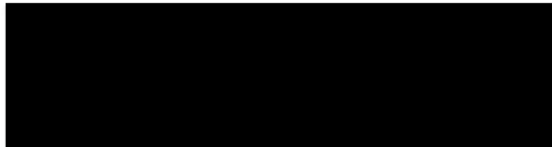
Mail Date:
Letter ID:
CLM:
Name:



Notice of Determination

Case Number:
SSN:
Claimant:

BYB:
Employer Number:
Involved Employer:



Issues and Sections of Michigan Employment Security (MES) Act involved: Misconduct and 29(1)(b).

You were fired from

Although you received past warnings, evidence has not been provided to establish misconduct.

You are not disqualified for benefits under MES Act, Sec. 29(1)(b).

Pursuant to Section 20(a) if an employer has established a pattern of failing to provide timely or adequate information in response to Agency requests for the purpose of making proper adjudications of claims/issues; the employer's account will not be credited for benefits paid prior to the date that the protest providing timely or adequate information was received.

Calculation of interest and penalty amount is shown later on this form.

If you disagree with this determination, refer to "Protest Rights" on the reverse side of this form.

