



TO:

Honorable Gretchen Whitmer
Governor of Michigan
P.O. Box 30013
Lansing, MI 48909

Via email: % JoAnne Huls, **Chief of Staff**

Tricia Foster
State of Michigan Chief Operating Officer

Susan Corbin
LEO Acting Director

Julia Dale
UIA Director

**RE: Continuing Collection Efforts Against Michigan's Unemployed Who Relied on
Federal Pandemic Unemployment Assistance**

Dear Governor Whitmer:

We are working with a coalition of advocates who represent Unemployment Insurance claimants in Michigan who are having legal issues with the Unemployment Insurance Agency. We are writing to urge you to take executive action to direct the UIA, the Office of Administrative Hearings, and the Unemployment Insurance Appeals Commission to offer, consider, *and grant* waiver applications related to CARES Act overpayment under the broadest provisions available.

On March 27, 2020, the CARES Act was signed into law providing Pandemic Unemployment Assistance (PUA) to unemployed workers who normally do not qualify for Unemployment Insurance. During subsequent months after its passage, the U.S. Department of Labor issued federal guidance clarifying eligibility criteria for PUA benefits. As a result, many Michigan workers who filed PUA claims in good faith, were initially deemed eligible, and received benefits had their eligibility determinations reversed and were then deemed ineligible. Moreover, the Agency acknowledged making dramatic errors in the application of that criteria, and the Agency is just now reviewing many files and reversing its decision to pay benefits.

The UIA continues to send notices to people who were retroactively deemed ineligible for benefits. Despite no wrongdoing on the part of the claimants, these notices demand repayment of amounts often as high as \$20,000-\$50,000. This is causing significant distress to thousands of claimants who were told they were eligible for benefits, relied on the money they received, and are not in a position to pay it back. These are not small sums for ordinary families. Despite assurances of a waiver from the Governor, the Agency has only granted waivers for a small subset of those it considers a result of "agency error".

Even now, more than 20 months after it granted benefits, the Agency continues to issue these letters declaring claimants to be retroactively ineligible and to attach frightening bills. It must be emphasized that the benefit payments were issued to these workers due not to any fault of their own, but rather, due to failure to properly or timely review applications or other submissions.

For Michiganders who suffered through this pandemic and are now seeking to stabilize household income, the massive bills are a financial hardship. Come January, Agency actions are expected to trigger a new round of garnishment of tax refunds and much more expensive consequences. In addition to creating great anguish for claimants, this is also damaging to the public perception of the administration and damaging to Michigan's economy.

The U.S. Department of Labor has granted the states a tool to address this problem. To date, the Agency is refusing to use it. We have attempted to coordinate with the Agency for eight weeks or more on this issue and have not received any meaningful response. We are asking the administration to use its power to provide relief to these claimants by directing the Agency to take the broadest possible interpretation of eligibility to waive repayment.

The problem is described as follows:

Under Michigan Employment Security Act Section 62(a), waivers of repayment shall be granted by the Unemployment Insurance Agency (UIA) for the following limited reasons:

- The claimant provided incorrect wage information without the intent to misrepresent, and the employer provided either no wage information upon request or provided inaccurate wage information that resulted in the overpayment;
- The claimant's net household income and household cash assets, exclusive of social welfare benefits, were, during the six months immediately preceding at or below 150%

of the annual update of the poverty guidelines most recently published in the Federal Register by the United States Department of Health and Human Services under the authority of 42 USC 9902(2); or

- The improper payments were a result of an administrative or clerical error by the unemployment agency. (A reversal of the eligibility determination is currently excluded from the definition of “administrative or clerical error.”)

However, applicable federal guidance from the U.S. Department of Labor also authorizes a state to apply a much broader standard for federally funded benefits provided under the CARES Act. Pursuant to DOL Unemployment Insurance Program Letter UIPL 20-21, the Agency is authorized to consider applications for hardship waivers for the following additional reasons:

- Repayment would cause financial hardship; or
- Due to the notice that payment would be made or because of the incorrect payment the claimant relinquished a valuable right or changed positions for the worse; or
- Recovery would be unconscionable under the circumstances.

These additional reasons are NOT dependent on an income or means test and provide a tool to prevent the extreme hardship of benefit overpayment collection. Over the last two-three months, the UIA has not responded to requests to use this tool for relief of Michiganders. Other states have recognized the urgency of granting this relief and have adopted this standard by administrative rule.

Michiganders are getting back to work, back on their feet. They do not need the Agency tasked with helping them through hard times to now be creating harder times with unjustified five-figure collection actions. Thank you for your consideration of our request to grant broad waiver for those retroactively determined to be ineligible for PUA.

Authority: See UIPL 20-21 at page 6-7, also CARES Act Sections 2102(d)(4), 2104(f)(2), and 2107(e)(2)

Signatories

Michigan United
Michigan League for Public Policy
Sugar Law Center for Economic and Social Justice
Michigan Poverty Law Program