



September 13, 2021

Elizabeth Fine
Counsel to Governor Kathy Hochul
NYS State Capitol Building
Albany, NY 12224

RE: NY Department of Labor’s failure to process federal unemployment overpayment waivers

Dear Ms. Fine:

We, the undersigned organizations that comprise the New York Unemployment Insurance Coalition¹ (“the Coalition”), are writing to request that the New York State Department of Labor (NYSDOL) immediately make overpayment waiver applications available and process these applications for all claimants who have been assessed with overpayments of federal unemployment benefits. During the pandemic, in an understandable rush to get benefits out the door to New Yorkers in desperate need, the NYSDOL mistakenly issued unemployment benefits to thousands of claimants. In most cases, claimants who received these benefits received them without fault and did not commit fraud. Claimants who received federal benefits without fault and are facing financial hardship are eligible for waivers. Yet, the DOL is only making overpayment applications available to a subset of claimants who incorrectly received double payments of \$600.00. Despite being authorized by the Federal government to process waivers for overpayments of all federal unemployment benefits, the DOL has inexplicably failed to do so. The DOL’s failure to process overpayment waivers is particularly frustrating as the overpayment waivers are for federal dollars and have no impact on the NY State UI trust fund.

The Coronavirus Aid, Relief, and Economic Security (CARES) act gave states the right to waive overpayments of Pandemic Unemployment Compensation (PUC) and Pandemic Emergency Unemployment Compensation (PEUC) in March, 2020. Later,

¹ A group of non-profit organizations working to reform the State’s unemployment insurance program. The Coalition was formed in 2005 and is comprised of the undersigned New York State-based organizations that fight for justice on all unemployment insurance related issues on behalf of low-income New York residents.

states were provided with the authority to grant overpayment waivers for the Lost Wages Assistance Program (LWA), Mixed Earner Unemployment Compensation (MEUC), and Pandemic Unemployment Assistance (PUA). The state can waive overpayments of PUC, PEUC, LWA, MEUC, and PUA in cases of non-fault and hardship. *See* UIPL NO. 20-21, May 5, 2021, found at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_20-21_acc.pdf.

The Claimants Affected

We believe that there are thousands of claimants in New York who are eligible for overpayment waivers because they received benefits without fault and would face extreme financial hardship if they were forced to pay back benefits. Below are a few examples of claimants who face hardships because the DOL is failing to process overpayment waivers.

AZ² has continuously lived in the U.S. since 1981. He is a black car driver and applied for unemployment after work dried up when the pandemic shutdowns occurred in March 2020. The DOL approved PUA benefits to AZ even though he was not legally eligible due to his immigration status. When the DOL realized its error, AZ was assessed with overpayment of over \$22,000. AZ was forthcoming, revealed his immigration status during the application process and did not make any false statement or hide any information to receive the benefits. If he is forced to pay back these federal benefits, AZ will face extreme financial hardship as he will not be able to pay his mortgage or the maintenance for his vehicle that he needs to do his job.

KN has been in the United States for many years as an I-Visa holder, working as a representative for a foreign media outlet. She was laid off by her employer due to the pandemic restrictions in NYC, with an assurance of being recalled to her employment once possible. Consequently, KN applied for PUA benefits and was subsequently approved. KN had emailed NYSDOL all her immigration paperwork in May 2020 with a query as to her eligibility to ensure her immigration status was understood. She later received a notice of overpayment in December, 2020 totaling \$18,370 because she was ineligible to receive benefits based on her immigration status. KN was forced to move to find a cheaper apartment and is very concerned about spending money due to this current overpayment with the prospect of repayment being required. KN received the benefits without any fault and does not have the financial resources to repay these benefits.

CC quit her job at a crowded Central NY seasonal bar/restaurant in June of 2020 because the employer was not complying with COVID-19 protocols. CC was concerned about being infected with COVID-19 at work and bringing it home to her mother and husband who both suffer from serious health issues. In her off-duty hours, CC provides daily care to her 63-year-old disabled mother. Her mom suffers from multiple health conditions that elevate her risk of infection by COVID-19, including severe Chronic Obstructive Pulmonary Disease (COPD). COPD is a chronic inflammatory lung disease

² Claimants' names have been shielded to protect their confidentiality.

that causes obstructed airflow from the lungs. Symptoms include breathing difficulty, cough, mucus production and wheezing. In addition to providing care to her mother, CC resides with her spouse who suffers from a serious lung disease, and permanent lung damage resulting in a very high risk of serious infection by exposure to COVID-19. The claimant received \$6520 in recoverable federal benefits. The employer successfully challenged CC's benefits arguing that she did not have good cause to voluntarily quit. However, there was no finding of willful misrepresentation or penalties issued because the claimant was not at fault in receiving benefits. The unanticipated debt of \$6,320.00 is highly likely to cause a huge financial hardship to the claimant and her family who are dependent on her.

The Proposed Action

We request that the NYSDOL immediately send waiver applications to all claimants who have been assessed with overpayments of federal benefits. Further, we request that the NYSDOL immediately process these applications pursuant to Federal law.

For additional information, please contact Jim Williams, Managing Attorney, Special Projects, Legal Services of Central New York, at (315)-703-6520 email: jwilliams@lscny.org or Tori Roseman, Staff Attorney, Volunteers of Legal Service, at 929-260-3820 email: troseman@volsprobono.org.

Sincerely,

The NY UI Coalition:

Brooklyn Defender Services
Empire Justice Center
Just Cause, formerly Volunteer Legal Services
Project of Monroe County, Inc.
Legal Assistance of Western New York, Inc.
Legal Services of Central New York
Legal Services NYC
Mobilization for Justice, Inc.
New York Legal Assistance Group
New York Taxi Workers Alliance
The Bronx Defenders
The Legal Aid Society of NYC
The Legal Aid Society of Northeastern New York
Volunteers of Legal Service

Cc: Roberta Reardon, Commissioner, NY Department of Labor
Debra Alligood-White, Deputy Secretary for Civil Rights and Workforce