

VERMONT LEGAL AID, INC.

OFFICES:

BURLINGTON
RUTLAND
ST. JOHNSBURY

177 WESTERN AVENUE SUITE 1
ST. JOHNSBURY, VERMONT 05819
(802) 748-8721 (VOICE AND TTY)
FAX (802) 748-4610
(800) 769-6728

OFFICES:

MONTPELIER
SPRINGFIELD

June 9, 2020

Senator Michael Sirotkin, Chair, and Members of
Senate Economic Development, Housing and General Affairs Committee
Montpelier, VT
VIA EMAIL

Re: PUA and Penalty Weeks

Dear Senator Sirotkin and Members of the Senate Economic Development Committee:

I listened to meetings and testimony before the Senate Economic Development, Housing, and General Affairs Committee last week related to the 106 Vermonters who are currently barred from unemployment benefits because they are serving penalty weeks.

Committee members legitimately questioned whether granting PUA to people serving penalty weeks might be considered a reward to someone who defrauded the state of Vermont. This is of particular concern in regards to the Department's single example of the person who fraudulently obtained \$100,000.00 in unemployment benefits from the State. However, it is not a reward to give a person a lifeline to allow them to survive. Congress designed PUA to reach everyone not otherwise eligible for regular unemployment insurance, regardless of the reason. PUA is not a reward, but rather a desperately needed lifeline to keep families from going under during this public health crisis.

The Committee wisely expressed a desire to know more about who else is in the group of 106 persons serving penalties, and is thus shut off from income during the pandemic. We disagree with the Department's characterization that all the cases are "egregious." Primarily, the unemployed workers serving penalty weeks we have seen at Vermont Legal Aid are individuals who made mistakes in filing and reporting on their unemployment claims in the past, some of whom simply did not appeal fraud determinations. The reasons they failed to appeal include illness, death in their immediate family, misinformation about their rights, lack of access to counsel, and generally just not having the bandwidth to pursue an appeal because of other responsibilities.

I previously wrote to Senators Sirotkin and Clarkson about my client who never appealed the underlying fraud determination which is keeping him from being allowed to apply for PUA, not because his appeal did not have merit, (it did), but because his life was in turmoil due to the death of his parents. Here are some other examples of the people among the 106 suffering serious financial hardship because they are currently barred from applying for PUA:

Client 1 - This client was assessed penalty weeks for intentional misrepresentation/non-disclosure on the issue of whether he was able & available for work. The client received a 15% penalty fine, and 9 penalty weeks. The overpayment has been completely paid back; if he could find another job, he would. But he cannot, due to the pandemic. So he is stuck with no income to meet his basic needs and provide for his family.

When the finding of fraud was made, this client was laid off (seasonally) with a call-back date. While in layoff status, he suffered a cardiac problem. He continued to claim unemployment while being treated for the cardiac problem. When he got the date to go back to work, the employer asked for a clearance from the doctor. The client was willing to move his cardiac rehab time to be able to work. Unfortunately, the doctor would not clear him for work. The client did not understand this made him unable to work under unemployment rules, even though he believed he could work.

Client 2 - This client is a young person, with young children. A few years ago, the client was given three penalty weeks; he has repaid his overpayment. The client did not have any paperwork from the prior overpayment so he was unsure how much DOL assessed. Even at the full benefit amount, the overpayment assessed could not have been more than \$1500. Although he repaid the overpayment some time ago, he was forced to go without income—crucial for the support of his family—without the ability to look for and secure other work due to the virus.

Client 3 - As best as the client can determine today without getting any documentation, the DOL assessed a \$1,100 overpayment (approximately) in 2013. At that time she was having great personal difficulties, and she has little recall of precisely what happened. There was a tax offset, and IRS eventually returned some money to her because she overpaid on that. In addition, DOL obtained a judgment against her, which also was paid, and a satisfaction of judgment was filed. The client was recently told by phone that she has a 26-week penalty period. She has received nothing in writing so is not sure how many penalty weeks there are or precisely when those were imposed.

This client knew there were penalty weeks from the past. There were times she was eligible for unemployment in the last few years, but she did not apply because she knew she was ineligible for unemployment because of the penalty weeks. She believed that by not applying for benefits when she was eligible, she was serving her penalty weeks. Instead, she is being forced to serve those penalty weeks “again,” when she became unemployed due to Covid.

From the client: *"This is just not ok I'm being punished all over again, I'm not going to lie this is extremely hard with a child that's 6. ...If I didn't work my entire life, didn't pay this money back many year's ago then I wouldn't feel I should receive. But I did all I thought I was supposed to do. Goodness if I'd known about six month penalty another 6000.00 taken I'd filed the 6+ months I was completely unemployed during 2015 when i had my son, other times when I could have filed but didn't as I hate to ask for help. I should have I had no idea."*

Client 4 - This is a former client. This client suffered from cognitive impairments. He was accused of misrepresentation, and a Legal Aid attorney represented him in his appeal of that determination. The client's sister was really upset because she said the client was incapable of lying. The client felt that the claims adjudicator just hadn't listened to him in the fact-finding interview, and there were many egregious inaccuracies in the adjudicator's findings. With Legal Aid representing him at the hearing, the ALJ waived the penalty weeks and the finding of "fraud." The whole experience was frightening for the client. Had Legal Aid not represented him, he likely would be showing up as one of the 106 "egregious" cases now being barred from obtaining unemployment benefits.

Please consider the plight of these Vermonters when deciding whether to sign onto the House's letter directing the Department of Labor to allow people serving penalty weeks to apply for PUA. These people are not examples of egregious behavior, nor are they criminals. They are regular Vermonters who made mistakes or otherwise had problems navigating the appeals process. Many of them already have paid back in full the overpayments resulting from a non-disclosure/misrepresentation finding. We urge the Committee to make critically-needed benefits available to Vermonters serving penalty weeks. Please do not allow Vermonters to suffer during an unprecedented pandemic because one person managed to defraud the unemployment system of \$100,000.00.

The best way to steer a ship in a storm is to pursue the path that promises the least amount of destruction. Regardless of the reasons for the underlying "fraud" determinations, the salient fact is that because of an unprecedented health crisis, people who lost their jobs and are not allowed to apply for unemployment benefits are still suffering drastic cuts in income. Many of those unemployed workers have families and will be forced to turn to Reach-Up or other welfare programs in order to provide for their families during the pandemic. These individuals are unable to feed and house their families – causing a certain increase in Food Stamps cases, evictions and foreclosures. The best way to steer the ship in Vermont to ensure that that families don't go under, is to make sure workers maintain a healthy connection to the workforce through temporary unemployment benefits. Further, we contend that every person deserves compassion during this unprecedented public health crisis – even the ones who have made serious mistakes in the past. When a ship is sinking, everyone deserves to get on the lifeboat - everyone deserves to be saved. Providing PUA to those individuals serving penalty weeks is the most efficient and effective lifeline to help them survive this temporary crisis.

Please do not hesitate to contact me if you should have any questions.

Thank you.

Sincerely,

/S/

Kelli Kazmarski
Staff Attorney