

**State of Vermont**  
**Department of Labor**  
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March 8, 2021

Ms. Kelli Kazmarski, Esq.  
Vermont Legal Aid, Inc.  
177 Western Ave, Suite 1  
St. Johnsbury, VT 05819

Re: Response to January 5, 2021 letter sent to the Department of Labor

Dear Ms. Kazmarski,

First, I want to thank you for your diligent work over the past ten months in helping Vermonters understand and access the unemployment system and who, without your help, may not have otherwise been able to effectively file and receive benefits. In addition, I appreciate your patience as we worked to get you a comprehensive response to your questions and concerns. While our means to the ends may not always align, we do share the same end goal of serving Vermonters by providing unemployment insurance benefits to eligible applicants. Over the course of the pandemic, the Department has taken many steps to expedite claims processing and prioritize people over processes. I echo your concerns in the identified areas and have directed our UI team to address these to the best of our ability.

I would also like to take a moment to acknowledge the pre-pandemic unemployment conditions here at the Department. For the week ending March 14, 2020, there were less than 5,000 active claims in the system and our unemployment insurance division of 60 staff members had less than 10 customer service representatives answering phones in our call center. As you are likely aware, the UI division was severely underfunded and understaffed prior to the Pandemic, and even to this day with more than 35,000 claims in the system, remains constricted due to the massive pressure on the unemployment system, as well as limited support from the federal government.

At this time, 11-months later, many of our division staff remain reassigned to claims processing and resolution, and are unable to perform their normal job duties. However, we continue to identify various points in our processes to streamline and improve in hopes of enhancing the claimant experience. Additionally, I would like to respond to each of your concerns directly, and have done so below.



1. PUA Claimant Awaiting a Determination:

We did see many claimants in “limbo” early on in the Pandemic. This was because their claims were complicated in nature, and without clear guidance from USDOL, eligibility determinations required an extensive review. We were not only overwhelmed by the number of claims awaiting a determination, but also by the number of claims going into adjudications for simple claim issues that did not require a formal determination. At this time, given the volume of PUA claims, our team has a time-lapse of between 60-90 days for adjudicating a PUA claim; however, I have asked the team to review the current process and assess whether there are opportunities to speed up this process and what resources would be needed to do so. Additionally, I am aware that there have been times over the past year where some unique cases experience a significant delay in receiving a determination due to needing input from the federal government. Overall, our adjudications unit’s time-lapse for issuing a determination is less than 90 days, and at one point prior to our seasonal layoff period in November 2020, was under 45-days. This does not include claimant requests for backdating claims, as that process was amended to allow claimants to continue to file current weekly claims while waiting for a determination on their backdating request. It is our goal to achieve a time-lapse of 30-days or less, and we will continue to work toward achieving that objective.

As you know, claimants who are deemed ineligible are afforded the ability to appeal the determination made by the program. Claimants who are in PUA and awaiting a determination are being contacted by a specialist to determine if their claim can be resolved outside of the formal adjudications process. One thing that has slowed this process, is the federal requirement that every PUA application must first be run through the UI eligibility determination process prior to being able to be considered for the PUA program. This includes having to use the state’s three methods for determining monetary eligibility before becoming PUA eligible.

It is important to note that the adjudications process is an essential piece of the claims process and ensures integrity in the unemployment system by flagging claims that trigger a possible issue. Having a robust and comprehensive adjudications process safeguards the Department, and the unemployment trust fund, from improperly paying claimants, which can result in significant overpayments.

2. Claims Delayed Due to Pending Adjudication:

As you know, claims that require further review for an accurate eligibility determination are assigned to the adjudications unit so that factfinding can be conducted and an eventual determination can be issued. There are many factors that contribute to the length of time a claim resides in the adjudications process. The first, and most significant reason, is the extreme number of unemployment claims filed with the Department. At one point in time, the UI division saw an average of 1,500 claims being sent to the adjudications unit each



week. Secondly, in order to effectively adjudicate a claim, the adjudicator must be a subject matter expert in determining eligibility in accordance with both state and federal requirements. At the start of the Pandemic, there was a total of six claims adjudicators in the Department and as of now, there are over 20 adjudicators, along with 28 factfinders, working to resolve claims that reside in the adjudications process. Vermont is not alone in this arena, as every state has struggled to manage the large number of claims going through the adjudications process. Finally, this issue is further exacerbated by the limited amount of additional funding being provided by the U.S. Department of Labor for general UI administration. To date, the Department has received only \$3MM in additional federal funding specific to general UI administration.

3. Overpayment of Benefits Due to Department Error

Until the most recent CARES Act extension, states were unable to waive improper payments in federal programs, even if the payment was due to Department error. Under the new federal guidance, states are able to waive the overpayment of benefits in situations where the overpayment is due to Department error, and where requiring repayment would be contrary to equity and good conscience. Even before this new guidance, the Department was waiving overpayments that occurred in non-federal programs due to Department error, and now has begun waiving overpayments as allowable within the federal benefit program requirements.

4. 30-Day Appeal Deadline

Following a discussion with both the Unemployment Insurance Director and the Department's General Counsel, it is believed that any extension to the timeliness provision in 21 V.S.A. § 1348 would require a change to the statute. With that, I have asked our General Counsel to see if the Department has the ability to impose an administrative grace period. It should be noted that if a claimant was unable to reach the Department during periods of high claim volume, the Department has provided exceptions for those individuals. I do recognize that under the law, the Department has a 30-day statutory requirement to hear appeals and the Department has taken significant steps to expand its capacity in the UI appeals unit by adding an additional seven Administrative Law Judges; however, given the volume of claimant appeals and the technical nature of the various benefit programs, there simply is not the ability to hire enough skilled staff to meet the 30-day time-lapse at this time. As you know, there are mechanisms built into this process to allow cases to be reheard when the claimant can demonstrate that the failure to meet the deadline was due to circumstances beyond their control. Please know that we continue to endeavor to meet this deadline and have authorized additional overtime to allow Administrative Law Judges to expand their caseload.

5. The Department's contracted call center has anywhere from 50-200 agents on the lines at any given time and we continue to provide regular training to our call center agents; however, this industry has extremely high turnover, making it hard to increase the knowledge base of



the agents. Both the Department and the vendor perform regular audits of calls made to the call center to ensure correct information is being provided to claimants, and direct action is taken if it is found that false information or poor service is being offered. Additionally, the vendor has recently devoted additional operational resources to better ensure claimants consistently receive accurate information. Unfortunately, the Department does not have the resources at this time to make long-term investments in full-time permanent staff, as funding from the federal government has been sporadic and brief.

In closing, the Department is regularly evaluating needs and assessing areas of improvement to better serve Vermonters who, in many cases, are relying on these benefits to simply survive. The goals of our two agencies are in alignment; however, because the unemployment insurance program is regulated at the federal level, it requires the Department to maintain various program requirements, regardless of current economic conditions or individual claimant circumstances. However, please know that I remain committed to ensuring the Department strives for improved claimant and employer support as we battle this ongoing crisis.

Sincerely,



Michael A. Harrington  
Commissioner  
Vermont Department of Labor

