

Dear Rep. Kornheiser:

Thank you for the opportunity to address the committee this morning. I completely understand that time was limited, and I did want to briefly respond to VDOL's testimony from this morning:

1) When commenting on the proposal for an elevated standard of proof in fraud cases, Director Wood indicated that the Department only needed to show that a claimant earned money, and didn't report that money, to make a finding of fraud. This is not correct and it is exactly this reasoning that Legal Aid has objected to in specific cases on appeal. Fraud also requires a finding of intentionality – which is often missing in current VDOL determinations of fraud. Legal Aid has helped a significant number of clients have their fraud findings and penalties reversed for the exact reason that the findings were only that a person earned money and failed to report – with no inquiry into whether or not the failure to report was intentional.

2) A requirement of clear and convincing evidence in the first place for a finding of fraud would likely reduce the number of times a claimant appeals or seeks redetermination! It should at least reduce the number of reversals upon appeal, and the need to consider retroactive benefits, because requiring a higher standard of proof should also reduce the likelihood of an original incorrect decision.

3) I would dispute the Department's contention that its current process for investigating allegations of fraud meets with the requirements of Due Process. It is true that claimants usually get determinations in writing (although some have not) and that there is a right to appeal. However upon information and belief the experiences of claimants who are in adjudications (what the department calls the period of time when it investigates any issue on a claim such as allegations of fraud) vary widely. Some are given days to respond if the adjudicator leaves a message, some are given hours. Some have returned the adjudicator's call in the requisite time, left a message because the adjudicator was not available, and then never received a call back. Some have been bullied or harassed by the adjudicator. Some say their comments were taken out of context or not recorded correctly. The claimant may or may not get a copy of any notes taken by the adjudicator. There is no electronic recording of these interviews with adjudicators so there is no way to review them if a claimant complains about the process. The adjudications process is really not about Due Process for claimants – it is the Department's own internal method for making determinations when an issue arises on a claim. The committee should also be aware that the fact that a right to appeal exists is really not helpful for claimants right now, since benefits are suspended immediately upon VDOL's finding of fraud, and *appeal hearings are currently taking 4 - 6 months or longer to be scheduled* – even though the department is statutorily mandated to conduct appeal hearings within 30 days. Considering the need for unemployment benefits to be issued timely, the current delays in appeal hearings - the claimant's only vehicle for reversing an incorrect decision – make the Due Process concerns significantly worse.

Thank you again for this opportunity and the work of this committee. Please let me know if you have any questions.

Sincerely,

Kelli Kazmarski

[Kelli L. Kazmarski](#)

[Staff Attorney](#)

[Vermont Legal Aid, Inc.](#)

[177 Western Avenue, Suite 1](#)

[St. Johnsbury, VT 05819](#)

[Phone: \(802\) 748-8721](#)

[Fax: \(802\) 748-4610](#)

Toll Free: (800) 769-6728  
Pronouns: she/her

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