



Farmworker Legal Services

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Chairperson Julie Petrik
Unemployment Insurance Appeals Commission
Department of Labor and Economic Opportunity

Sent via email to: petrikj@michigan.gov

Dear Chairperson Petrik and Unemployment Insurance Appeals Commission,

We appreciate the Commission's efforts to update the administrative rules governing appeals, and we are glad to have the opportunity to comment. We also appreciate the ability to engage in ongoing communication with the UIAC pursuant to Michigan Administrative Rule 792.11428. We hope that the revised rules will maintain this spirit of collaboration that the rule currently describes.

Through direct legal help and statewide advocacy, the Michigan Advocacy Program (MAP) provides free civil legal aid to low income individuals in 13 counties. Farmworker Legal Services (FLS) is a division of MAP, and we are committed to ensuring immigrant, migrant, and seasonal farmworkers have equal access to economic and social justice. FLS has represented many Michigan workers who have felt intimidated by the unemployment insurance system and the appeals process. For these reasons, we hereby incorporate the recommendations related to the improvements to the rules and policies that were submitted by the University of Michigan Workers' Rights Clinic¹ on January 27, 2020 and provide the following additional recommendations for improving the general operation, rules and policies of the Commission:

I. Extension of 30-Day Deadline for Relocated Workers

The Commission should expand the examples for good cause to extend the 30-day deadline for Claimants with insecure housing. Rule 792.11431 states:

A request for a reopening and review of the Michigan Compensation appellate commission's decision shall be received by the Michigan compensation appellate commission within 1 year, but moe [sic] than 30 days after the mailed date of decision.

Rule 792.11402 provides examples for good cause but fails to recognize the transitory nature of many of Michigan's unemployed workforce. There are over 94,000

¹ Attached for the Commission's convenience.



farmworkers and their family members who reside in Michigan.² Traditionally, the majority of Michigan’s farmworkers migrated to Michigan from Texas, Florida, and Puerto Rico and have sought employment in other states before or after their employment in Michigan.

Many of these people travel to Michigan for just a few months of employment before they are laid off and forced to search for employment elsewhere. These are the clients we represent, but they are but one example of workers who travel in Michigan for employment, and who are forced to travel again when employment ends. A job can end suddenly, and so does the ability to afford housing. Workers are left with little time and resources to maneuver the unemployment insurance system before they depart to search for their next job which can be in another county or another state.

In three out of every four civil cases, at least one side is self-represented.³ This means that self-represented individuals must learn and apply the law before their rights are waived. The time requirements to apply for unemployment benefits, and to protest or appeal if they are denied, are quick. Protests arrive without warning, sometimes many months after a claimant registers for benefits. Yet the 30-day deadline remains the same. It is unreasonable for a claimant to track mail at multiple addresses, yet this is often a reality for relocated workers. There should be an extension of time to file a protest or appeal if workers can show that they had to relocate while their appeal deadline was pending.

Unemployment cases may be reopened for “good cause” under Michigan Administrative Rule 792.11402. The Rule already includes language for failure to receive notice and for untimely mailing. However, these rules do not protect workers who receive timely notice at a location where they do not currently reside. We ask that the Commission add another explicit reason for good cause that applies to workers who are forced to relocate. Additional language could look like:

(vi) Having resided at an address, other than the one included on the Notice, within the 30-day appeal deadline.

The Michigan Employment Security Act was “designed to... ameliorate the disastrous effects of involuntary unemployment.”⁴ The effects of unemployment can be residual, realized months and years later. Even if a worker finds a new job, they may still face the threat of poverty. Unemployment benefits can help workers pay debts that they accumulated while they searched and traveled for new employment. An explicit good-cause exemption would help relocated workers focus on finding a new home and employment without the risk of losing benefits or their right to appeal.

² Michigan Migrant and Seasonal Farmworker Enumeration Profiles Study 2013, *available at* https://www.michigan.gov/documents/dhs/FarmworkerReport_430130_7.pdf.

³ Michigan Courts News Release, “Chief Justice McCormack, Justice Zahra to Lead Task Force ‘Town Hall’ Meetings to Address the Civil Justice Gap” (Jan. 23, 2020) *available at* https://courts.michigan.gov/News-Events/press_releases/Documents/JFA%20Town%20Halls%20Media%20Advisory%20FINAL.pdf.

⁴ *Korzowski v Pollack Indus*, 213 Mich App 223, 228-229; 539 NW2d 741 (1995).

II. Commission to Provide Notices in Other Languages

We ask that the Commission ensure individuals receive proper notice and access to the rules and appeal process. According to the 2017 U.S. Census American Community Survey One-year Estimates, 877,280 (9.4 percent) of citizens of the state of Michigan ages five years or older speak a language other than English at home.⁵ For these people, receiving notices and rules only in English is another hurdle they have to jump in order to receive unemployment benefits.

U.S. Department of Labor regulations require that states ensure “individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State”, and that states “include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.”⁶

The current Babel notice on the Notice of Hearing and Notices of Redetermination and Determination is insufficient. It should be more prominently located on the first page of the Notice, rather than on the fourth page in a smaller font. Also, the Babel Notice fails to incorporate the deadline for which a response is required, and it does not provide instructions on language translation.

We ask that the Commission ensure individuals receive notices in their proficient language. When a claimant registers for unemployment, they could identify their preferred language, and expect to receive all future notifications in that language. This could greatly improve participation in the system.

III. Allow Greater Access for Claimants with Limited English Proficiency

In addition to providing notices in other commonly used languages, the Commission could also allow greater access to the rules and appeals process by being more responsive to claimants who speak other languages, with an emphasis on the next-most commonly used languages in Michigan: Spanish and Arabic. As examples, the commission could allow:

- The “A Guide to Unemployment Insurance Appeals Hearing” to be made available online in English, Spanish, and Arabic;
- Forms, rules, and procedural information to be made available online in English, Spanish and Arabic;
- Responses to inquiries, protests and appeals to be allowed in English, Spanish and Arabic;
- Translations to be made available by mail for claimants who also have limited access to computers.

⁵ See https://www.michigan.gov/documents/mdot/MDOT_LEP_Plan_2017-Final_605859_7.pdf (citing U.S. Census Bureau, 2013-2017 American Community Survey Five-Year Estimates).

⁶ 20 C.F.R. § 602.

In addition, limited English capacity should be added to the list of “good cause” examples provided under Michigan Administrative Rule 792.11402. We ask that the Commission add another explicit reason for good cause that applies to claimants with limited English proficiency:

(vii) If a claimant has limited English proficiency or literacy.

These changes could greatly improve equitable participation in the system.

IV. Certified Interpreters

The rules are silent regarding the process of requesting interpreters. This process should be described in the rules. This will allow for uniform and fair delivery of interpreter services.

We ask the Commission use certified interpreters when available and incorporate the best practices developed by the Michigan Supreme Court’s State Court Administrative Office.⁷ This process ensures not only language fluency, but also proficiency in courtroom and legal terms. While certified interpreters may not always be available, the administrative hearings should utilize them first.

V. Transcript Copies Should be Provided Free to Low-Income Claimants

Appealing an administrative decision is not a realistic possibility without access to a transcript of the hearing. Rule 792.10408 provides a copy of an administrative decision “free of charge” to each party. We ask that the Rule also provide for each claimant to be provided a “free of charge” transcript upon request and affidavit of indigency.

VI. Attorney Access to MiWAM

For some workers, maneuvering the MiWAM system has been impossible. Many do not have email addresses and are not technology savvy. Most farmworkers, for example, do not have access to a computer or internet services while working in Michigan. If they are able to access the internet, it is often by using their phone with a limited data plan. For their attorneys, logging in to check for updates can be just as challenging.

The likelihood of success in protesting or appealing an unemployment determination is significantly increased when a claimant has an attorney. But the ability of attorneys to gather information in unemployment insurance cases is limited. The system requires dual authentication, with a temporary login code sent by text or email to the client. It is an unnecessary burden for us to interrupt their day each and every time we seek to see if their determination was delivered, or to see if employer documents have been uploaded.

⁷<https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/FLI/Documents/LAPJudges%20BestPracticesGuide.pdf>

If attorneys had the ability to directly access client information, the clients (and their attorneys) would face much less anxiety about failing to meet deadlines and forfeiting the unemployment benefits that could sustain workers while they search for new employment.

We respectfully ask the Commission to add to Administrative Code Rule 792.11417:

(4) A licensed attorney who files an appearance for a claimant per UIA Form 1848 with the Unemployment Insurance Agency shall be given direct access to a claimant's unemployment insurance documents stored on file with the Unemployment Insurance Agency through the MiWAM online portal.

In addition to this rule change, we ask the Commission to create an online portal login for attorneys where they can directly file an appearance and obtain access to client documents. This would be a welcome convenience for attorneys, who often fail to receive direct mail updates for their clients' unemployment cases. It would also reduce the administrative costs associated with the Agency, Administrative Law Judge and/or Commission having to respond to requests for files. The separate login would also reduce the risk of unauthorized logins by tracking an attorney's registration number. Attorneys who obtain access without permission would be subject to sanctions under the Rules of Professional Conduct.⁸

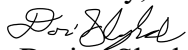
This proposed change is not a new idea. States like Massachusetts allow for third-party logins for unemployment insurance cases.⁹ We ask that Michigan follow suit.

Conclusion

Michigan depends on seasonal and migrant labor. The work is inherently unstable, and the workers who travel to Michigan take on real risk. The inability to access the system should not be a reason that any Michigan worker is denied unemployment benefits.

We thank the Commission for its openness in its efforts to modernize the unemployment insurance process. We also thank the Commission for its attention to the issues that face claimants, and for considering the positive impact that could be realized by amending the rules that govern the unemployment benefits process. We look forward to continuing to collaborate within the scope of Rule 11428.

Sincerely,


Dorian Slaybod
Staff Attorney

⁸ Professional Conduct Rule 8.4 (“It is professional misconduct for a lawyer to... engage in conduct involving dishonesty, fraud, deceit, misrepresentation...”)

⁹ Authorize a Third Party Administrator, *available at* <https://www.mass.gov/how-to/authorize-a-third-party-administrator>.