

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

NAWAHEM ELKHATIB,

Claimant.

Appeal Docket No.: [REDACTED] 22-003623

UIA Case No.: [REDACTED]

In the Matter of

DANTE M. SHEFFIELD,

Claimant,

Appeal Docket No.: [REDACTED] 22-003551

UIA Case No.: [REDACTED]

[REDACTED]
Employer.

In the Matter of

DENISE S. LONDON,

Claimant.

Appeal Docket No.: [REDACTED] 22-003931

UIA Case No.: [REDACTED]

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

Issue

Three cases are on appeal to the Unemployment Insurance Appeals Commission (Commission) on the common issue of a claimant's entitlement to the financial hardship waiver under Section 62(a)(ii) of the Michigan Employment Security Act (Act), MCL 421.62(a). The Unemployment Insurance Agency (Agency) determined that each claimant was overpaid unemployment insurance benefits. Each claimant applied for a waiver of repayment on grounds of financial hardship.

In this decision, we examine the financial hardship waiver provision in Section 62(a)(ii). Under that provision, the Agency must waive overpayment if the claimant's net household income and household cash assets, exclusive of "**social welfare benefits**," fall under a certain threshold in the six months prior to the month of the application. The Agency includes Unemployment Insurance (UI), Pandemic Unemployment Assistance (PUA),¹ and some Social Security benefits in the household income calculation. The claimants maintain that these are social welfare benefits that may not be properly included as household income.

¹ PUA is an unemployment insurance program created in 2020 by the Coronavirus Aid, Relief, and Economic Security (CARES) Act as a response to the COVID-19 Pandemic. 15 USC 116. It is a program funded by the federal government but administered by individual states to provide unemployment assistance to those who would not qualify for regular UI benefits, such as independent contractors and those with insufficient work histories.

In each of these cases, the Agency denied the claimant's application for waiver, and each case proceeded to a hearing before a different ALJ. After the evidentiary hearings, each of the ALJs excluded the benefits at issue from the household income calculation, found the claimant entitled to the waiver, and reversed the underlying Agency redetermination.

Thus, the issue for consideration by this Commission is whether the Agency may properly include UI² and Social Security benefit payments in the income calculation, or whether they should be excluded as "social welfare benefits." The Commission is unaware of any reported or unreported decisions resolving this issue. As such, the Chairperson designates the issue as a matter of First Impression.³

Introduction

We start our analysis of the issue with the Social Security Act of 1935,⁴ as it is the parent of the Act, MCL 421.1 *et seq.* Upon signing the legislation, President Roosevelt expounded upon the twin goals of the Act, which were to guard against the economic hazards of both old age and unemployment: "We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age."⁵

As to old age and other protections, the Social Security Act created several programs including Old Age (Retirement), Survivors, and Disability Insurance. Congress later passed the Social Security Amendments of 1972, which created Supplemental Security Income (SSI),⁶ a means-tested program for aged, blind, or disabled individuals.⁷ These benefits (Social Security Retirement, Survivors and Disability insurance benefits, as well as SSI benefits) are together known as "Social Security benefits" and will be referred to as such in this decision.

To guard against the hazards of unemployment, the Social Security Act created the federal-state unemployment insurance initiative.⁸ In Michigan, this led to the passage of the Michigan Employment Security Act of 1936, MCL 421.1 *et seq.* The purpose of the program, as set forth in the Declaration of Public Policy (Section 2), is examined in detail below. However, to put the issue in context, we turn to the introductory statement of the Act, which provides that it is:

An act to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; . . . **to provide for the protection of the people of this state from the hazards of unemployment;** . . . to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law . . ." [Emphasis added.]

² We use the term UI for all types of unemployment insurance, including regular and PUA benefits.

³ See Executive Order 2019-13.

⁴ Codified as 42 USC 7.

⁵ Social Security Administration, "Historical Background and Development of Social Security: The Social Security Act" <<https://bit.ly/49bcUT0>> (accessed January 25, 2024).

⁶ 42 USC 1381, *et seq.*

⁷ In its written argument, the Agency concedes that SSI is a social welfare benefit because it is a means-tested benefit. As such, we will not consider that benefit program any further, except within the scope of the Social Security Act generally.

⁸ 42 USC 501-506.

Thus, with the Social Security Act as the wellspring, Michigan adopted legislation specifically designed to “protect the welfare of the people of this state.”

Proceedings before this Commission

This Commission designated these cases for full Commission consideration on April 25, 2023 and posted the designation to the Commission website.⁹ On that same date, the Commission issued its Order permitting Oral and Written Argument and inviting the submission of amicus briefs.¹⁰

On April 25, 2023, the Commission issued orders in all three cases for the Agency to produce case history documents for each of the claimants and the Agency’s governing policy on financial hardship waivers. As to Claimant Elkhatib’s case, the Commission’s order also indicated it contemplated admitting a Social Security Administration letter verifying SSI payments to that claimant.¹¹ The Commission received no objections to the admission of the SSI payment letter and that document is hereby entered into the record as Exhibit 4E. The other documents produced by the Agency under the Commission’s order, which the Commission now admits into the record, are described in the attached Exhibit Table. For ease of identification, each exhibit is numbered and followed by the first letter of the surname of the claimant to which the exhibit relates. Exhibit 5 is the Agency’s policies and procedures.

Each of the claimants and the Agency submitted Written Argument to the Commission. The Commission also accepted the Amici Curiae Brief of the Michigan Poverty Law Program.¹² Oral Argument was presented before the full Commission on June 13, 2023.

Elkhatib

Claimant Elkhatib’s case is before the Commission pursuant to the Agency’s timely appeal from an August 30, 2022 decision by ALJ Grant.¹³ ALJ Grant reversed the Agency’s June 14, 2022 redetermination and found the claimant entitled to a waiver of restitution under Section 62(a).

Ms. Elkhatib’s repayment obligation arose from a December 16, 2021 nonmonetary determination that found her ineligible for PUA benefits (Ex 2E p 1).¹⁴ That determination included a list of weeks she had been overpaid benefits in the amount of \$15,640.00 for benefit weeks ending January 2, 2021 through August 21, 2021 (Ex 2E pp 4-5).

⁹ See <https://bit.ly/47uYOuN>.

¹⁰ With the orders, the Commission also included an “Authorization to Release Your Name” form for each of the claimants to allow the release of confidential information governed by Sections 11 and 52 of the Act. All three claimants signed and returned these waivers to the Commission, authorizing the Commission to release their names.

¹¹ The SSI payment document was in the ALJ materials but not admitted into evidence at the hearing. Mich Admin Code, R 792.11422(2) permits the admission of additional evidence by this Commission with disclosure to the parties and an opportunity to object.

¹² The Michigan Poverty Law Program is a cooperative effort of Legal Services of South Central Michigan and the University of Michigan Law School to support the advocacy of field programs; to coordinate advocacy for low-income individuals and families among the local programs; and to assure that a full range of advocacy continues on behalf of those individuals and families.

¹³ In its appeal to this Commission, the UIA sought a remand for facts on the amount and type of social security benefits received by Claimant Elkhatib. The Commission is satisfied that the Exhibits provide the necessary documentation for those facts. Further, the UIA did not renew this request in its Written or Oral Argument.

¹⁴ The page number references to the exhibits are to the pdf page number.

The claimant filed her financial hardship waiver application on July 16, 2021 (Grant at 4).¹⁵ Thus, the six-month period under consideration for this claimant was from January 2021 to June 2021 (Ex 1E). The claimant testified at the hearing that UI and SSI benefits were her only income during that period.

The Agency's witness testified that the claimant was paid \$8,620.00 in UI benefits during the six-month period. The Agency maintains that Ms. Elkhatib's UI benefits must be included in the Section 62(a)(ii) income calculation. Notably, for purposes of this calculation, the Agency included in net household income the very same benefits that she must repay. (See Weeks of Overpayment Ex 2E pp 4-5.)

The ALJ found that Ms. Elkhatib had not received any income for more than a year prior to her application for waiver and that she was "impoverished." (Grant at 4.) He further found that she received UI and SSI benefits, but they were not income for purposes of determining entitlement to a waiver. *Id.* at 5.

Sheffield

Claimant Sheffield's case is before the Commission pursuant to the Agency's timely appeal from an August 23, 2022 decision by ALJ Poirier. ALJ Poirier reversed the Agency's June 15, 2022 redetermination and found the claimant entitled to a waiver of restitution under Section 62(a).

Mr. Sheffield's repayment obligation arose from a July 22, 2021 nonmonetary redetermination that found him disqualified under Section 29(1) (Ex 2S p 6). That redetermination included a list of weeks he had been overpaid benefits in the amount of \$43,211.00 for benefit weeks ending April 18, 2020 through July 17, 2021 (Ex 2S pp 11-13).

Mr. Sheffield filed his financial hardship waiver application on September 16, 2021 (Poirier at 5). Thus, we examine Mr. Sheffield's income in the six-month period from March 2021 to August 2021. The claimant testified UI benefits were his only income during that period. The Agency representative testified that the Agency denied Mr. Sheffield's waiver application based on his receipt of UI benefits, which exceeded the household income threshold. As in the Elkhatib case, the Agency included in Sheffield's net household income, the very same benefit amounts that he must repay. (See Weeks of Overpayment Ex 2S pp 11-13.)

The ALJ found that Mr. Sheffield's UI benefits were social welfare benefits and therefore, could not be considered income for the financial hardship waiver (Poirier at 5-6). As such, the ALJ determined that the claimant's income and assets were below the Section 62(a)(ii) threshold. *Id.* at 6.

London

Claimant London's case is before the Commission pursuant to the Agency's timely appeal from a September 16, 2022 decision by ALJ Crews. ALJ Crews reversed the Agency's June 16, 2022 redetermination and found the claimant entitled to a waiver of restitution, under Section 62(a).

¹⁵ The underlying adjudication establishing Claimant Elkhatib's overpayment was issued on December 16, 2021 (Ex 2E p 1). Notably, this was *after* she filed her waiver application. Earlier, Claimant Elkhatib was found ineligible on a different issue. While that appeal process was ongoing, she filed the hardship application. That issue was later resolved in her favor. Thus, the waiver application was applied to the overpayment stemming from the December 16, 2021 determination.

Ms. London's repayment obligation arose from a July 13, 2020 nonmonetary determination that found her ineligible for benefits (Ex 2L p 1). That determination included a list of weeks she had been overpaid benefits in the amount of \$5,534.00 (Ex 2L p 5).

Ms. London filed her waiver application in December 2021 (Ex 1L).¹⁶ Thus, we examine Ms. London's income in the six-month period from June 2021 through November 2021. The ALJ's decision found that the claimant's earnings during the period of June 2021 through November 2021 had been employment income of \$9,350.57, UI benefits of \$3,746.88, and cash assets of \$171.02 (Crews at 5). The Agency's witness testified that the claimant received UI benefits during that period¹⁷ and that those benefits were counted as income when determining the claimant's eligibility for the waiver.

The ALJ found that Ms. London's UI benefits were social welfare benefits and therefore, could not be considered income for the purposes of a financial hardship waiver (*Id.*). As such, the ALJ determined that the claimant's earnings were below the threshold for a family of two (the claimant and a dependent) and that the claimant was eligible for a waiver of restitution for financial hardship (*Id.*). The ALJ incorrectly stated that 150% of the 2021 poverty guideline for a household of two is \$39,195; we note that the correct figure for 2021 is \$26,130 (\$2,177.50/month).

Analysis

Overpayments and the Waiver Application

Section 62(a) authorizes the Agency to recover benefit overpayments and establishes the parameters for such recovery. The mechanism for recovering overpayments is through a "restitution determination." A "restitution determination" is separate and distinct from a determination as to benefit entitlement issued under Section 32(a). Issuance of the restitution determination is mandatory and must be issued "within 3 years after the date of finality of a determination, redetermination, or decision *reversing a previous finding of benefit entitlement.*" Section 62(a) (emphasis added).

Section 62(a) also establishes that the Agency must waive recovery of an overpayment where it is "contrary to equity and good conscience."¹⁸ This term is defined to mean any of the three circumstances set forth in Section 62(a), one of which is financial hardship.

Financial hardship is a measure of the claimant's average net household income and household cash assets, with an exclusion for "social welfare benefits":

... [T]he unemployment agency shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience and shall waive any interest. . . . As used in this subsection, "contrary to equity and good conscience" means any of the following:

* * *

¹⁶ The record does not provide a precise date for when the Agency received this application, but its treatment of the case and qualifying months indicates it was received by the Agency some time in December 2021.

¹⁷ The Agency Form 1301 overpayment documents are somewhat confusing, but ultimately, we conclude that the benefits paid between June 2021 through November 2021 were not overpayments.

¹⁸ Waiver, however, is not permitted if the overpayment was a result of an intentional false statement, misrepresentation, or concealment of material information. Section 62(a).

- (ii) The claimant's average net household income and household cash assets, **exclusive of social welfare benefits**, were, during the 6 months immediately preceding the date of the application for waiver, at or below 150% of the annual update of the poverty guidelines most recently published in the Federal Register by the United States Department of Health and Human Services under the authority of 42 USC 9902(2), and the claimant has applied for a waiver under this subsection. . . . [MCL 421.62(a) (emphasis added).]

Under Section 62(a)(ii), the claimant must fill out an application for the waiver.¹⁹ The claimant's average net household income and household cash assets must be at or below 150% of the annual poverty guidelines published by the Department of Health and Human Services. The period under consideration is the six months immediately before the month in which the claimant applied for the waiver. The claimant is entitled to appeal the Agency's determination under this section, and the appeal rights are the same as for any other determination. See Sections 62(c) and 32a.

Legislative Intent

In crafting the financial hardship provision, the Legislature did not itemize the kinds of benefit programs included within the phrase "social welfare benefits." Thus, we must turn to the rules of statutory construction to resolve the disputed issue.

The goal of statutory interpretation is to discern and give effect to the Legislature's intent, which begins by examining the language of the statute. *In re Reliability Plans of Electric Utilities for 2017-2021*, 505 Mich 97, 119; 949 NW2d 73 (2020).

Legislative intent may be determined "after considering the language and general scope of the act, in light of the general purpose it seeks to accomplish or the evil it seeks to remedy." *Longstreth v Gensel*, 423 Mich 675, 680; 377 NW2d 804, 807 (1985). In examining and considering the language of the statute, the statute must be read as a whole, and the language must be considered in the context of the entire statutory scheme. *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75, 81 (2014); *Honigman Miller Schwartz & Cohn LLP v City of Detroit*, 505 Mich 284, 305-307; 952 NW2d 358 (2020).

For that we turn to the "Declaration of policy; findings" set forth in Section 2 of the Act. It is the starting point for our analysis as it sets forth in clear terms, the "general purpose" of the Act and the "evil it seeks to remedy."

Section 2(1) provides:

The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: **Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest**

¹⁹ The waiver application may be submitted either on UIA Form 1795 or through a claimant's MiWAM account. It requires the claimant to list sources of income including, "Wages, unemployment benefits, . . . [and] Social Security benefits" among others. The Agency makes its decision based on that information. Agency Manual Section 7922 (Ex 5 p 9). Additionally, the Agency checks the claimants' Agency record to "make sure the UI benefit amount is accurately represented in consideration of income" (Ex 5 p 12).

and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his or her family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves **to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.** [Emphasis added.]

The rules of construction require an examination of the statute as a whole when interpreting a particular provision of the Act. See *Madugula*, 496 Mich at 696, and *Honigman*, 505 Mich at 305-307. As such, when discerning the meaning of “social welfare benefits” in Section 62(a)(ii), we must give meaning to the legislative purpose set forth in Section 2(1).

In our opinion, the public policy section of Section 2(1) overwhelmingly evidences the Legislature’s view that UI benefits are social welfare benefits. The section ties together the two strands of social welfare legislation. First, it recognizes that the reason for benefit assistance is grounded in financial need, in this case, “economic insecurity caused by unemployment.” Second, the benefits assist both the individual in financial crisis and “is for the public good, and the general welfare of the people of this state.”

The Courts

Michigan’s appellate courts share the view that UI is a social welfare benefit. As stated by the Michigan Supreme Court in *Godsol v Mich Unemployment Compensation Comm*, 302 Mich 652, 665; 5 NW2d 519 (1942), “[t]he purpose of the unemployment compensation act is to relieve the distress of economic insecurity due to unemployment. **It was enacted in the interest of public welfare** to provide for assistance to the unemployed and as such is entitled to a liberal interpretation” (emphasis added).

Likewise, the Court of Appeals ruled that the Act is “economic and social welfare legislation.” *Larkin v Bay City Schools*, 89 Mich App 199, 206; 280 NW2d 483 (1979).

In *Smith*, the Supreme Court cataloged the appellate courts’ long-standing view that the Act is social welfare legislation:

Consistent with the stated purpose of providing relief from the hardship of involuntary unemployment, our courts have stressed the **remedial, social welfare nature of the MESA**, requiring that the statute be liberally construed to achieve its purpose and allow benefits, and that disqualifications from benefits be narrowly interpreted. *Copper Range Co. v. Unemployment Compensation Comm.*, supra; *Godsol v. Unemployment Compensation Comm.*, 302 Mich. 652, 5 N.W.2d 519, 142 A.L.R. 910 (1942); *Salenius v. Employment Security Comm.*, 33 Mich.App.

228, 189 N.W.2d 764 (1971); Fifth Dist. Republican Committee v. Employment Security Comm., 19 Mich.App. 449, 172 N.W.2d 825, 43 A.L.R.3d 1343 (1969). [*Smith v Mich Employment Security Comm*, 410 Mich 231, 278; 301 NW2d 285, 300 (1981) (emphasis added) (footnote omitted).]

In a 1985 workers' compensation case, the Supreme Court recognized that unemployment insurance is a social welfare program --- like the other social welfare programs:

All the social welfare programs—workers' compensation, **unemployment compensation, social security old age, disability, and survivors benefits**, no-fault automobile benefits, aid to families with dependent children, and general assistance—**are directed to the same objective, income maintenance.** [*Franks v White Pine Copper Div*, 422 Mich 636, 654; 375 NW2d 715 (1985) (emphasis added).]

In light of the purpose of the Act set forth in Section 2(1), and the Michigan courts' consistent view, there is but one conclusion--UI benefits provided under the Act are social welfare benefits.

As to the Social Security Act, there is ample authority that it is social welfare legislation. See *Flemming v Nestor*, 363 US 603, 611; 80 S Ct 1367; 4 L Ed 2d 1435 (1960); *Dandridge v Williams*, 397 US 471, 485; 90 S Ct 1153, 25 L Ed 2d 491 (1970); *Oliver v Ledbetter*, 821 F2d 1507, 1514 (CA 11, 1987); *Brown v Bowen*, 905 F2d 632, 635 (CA 2, 1990); *Rudykoff v Apfel*, 193 F3d 579, 580 (CA 2, 1999). More recently, the Michigan Court of Appeals stated, "The federal Social Security Act governs various *social welfare programs*, including state unemployment compensation, 42 USC 501 through 42 USC 506." *Farish v Dep't of Talent & Economic Dev*, 336 Mich App 433, 439–40; 971 NW2d 1 (2021)) (*Farish II*) (emphasis added).²⁰

The Michigan Supreme Court in *Franks* also included "social security old age, disability, and survivors benefits" in the category of social welfare benefits. As we show below, this has implications as we consider the Legislature's intent when in 2013, it drafted the financial hardship waiver provision.

Legislative History of Section 62(a)

The legislative history supports that the Legislature adopted the courts' view of UI and Social Security benefits when it drafted the financial hardship waiver provision. Over the years, the Legislature made numerous changes to Section 62 and defined many different terms. However, it never defined the term "social welfare benefits."

Prior to the amendments in 2013, Section 62(a) provided that the Agency was permitted to waive restitution under certain circumstances. In 2013, the Legislature amended the waiver language to remove the Agency's discretion and mandated that the Agency waive restitution where it would be "contrary to equity and good conscience." Importantly, the Legislature explicitly defined the three circumstances that come within the meaning of the phrase "contrary to equity and good conscience."

²⁰ There the Court concluded that 42 USC 503 of the Social Security Act precludes the UIA's practice of deducting interest and penalties resulting from a prior overpayment, from current benefit payments. *Farish* at 448. (The Social Security Act provisions governed this dispute as the federal government provides funding for the states on the condition that the states meet and follow certain requirements. The requirements are set forth in 42 USC 503(a). *Id.* at 439-440.)

Except in a case of an intentional false statement, misrepresentation, or concealment of material information, the unemployment agency shall waive recovery of an improperly paid benefit if the payment was not the fault of the individual and if repayment would be contrary to equity and good conscience and shall waive any interest. . . . **As used in this subsection, “contrary to equity and good conscience” means any of the following:**

- (i) The claimant provided incorrect wage information without the intent to misrepresent, and the employer provided either no wage information upon request or provided inaccurate wage information that resulted in the overpayment.
- (ii) **The claimant’s disposable household income, exclusive of social welfare benefits, is at or below the annual update of the poverty guidelines most recently published in the federal register by the United States department of health and human services under the authority of 42 USC 9902(2), and the claimant has applied for a waiver under this subsection.** A waiver granted under the conditions described in this subdivision applies from the date the application is filed.
- (iii) The improper payments resulted from an administrative or clerical error by the unemployment agency. A requirement to repay benefits as the result of a change in judgment at any level of administrative adjudication or court decision concerning the facts or application of law to a claim adjudication is not an administrative or clerical error for purposes of this subdivision. [Emphasis added.]

It is in this amendment that the term “social welfare benefits” makes its first appearance in the context of the waiver provision. See subsection (ii) above. As noted above, the Legislature did not define the term.

In 2017, the Legislature further amended Section 62(a)(ii) of the Act, changing “disposable household income” to “average net household income,” adding “household cash assets,” and increasing the income level. Further, in those same amendments, the Legislature defined three terms in the financial hardship provision, “cash assets,” “dependent,” and “household”:

Except in a case of an intentional false statement, misrepresentation, or concealment of material information, the unemployment agency shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience and shall waive any interest. . . . As used in this subsection, “contrary to equity and good conscience” means any of the following:

- (ii) The claimant’s **average net household income and household cash assets, exclusive of social welfare benefits, were, during the 6 months immediately preceding the date of the application for waiver,** at or below **150%** of the annual update of the poverty guidelines most recently published in the Federal Register by the United States Department of Health and Human Services under

the authority of 42 USC 9902(2), and the claimant has applied for a waiver under this subsection. . . . **As used in this subdivision:**

(A) “Cash assets” means cash on hand and funds in a checking or savings account.

(B) “Dependent” means that term as defined in section 27(b)(4).

(C) “Household” means a claimant and the claimant’s dependents.
[Emphasis added to reflect changes in Section 62(a)(ii).]

Again in 2017, the Legislature did not define the term “social welfare benefits.”

Under the rules of statutory construction, the legislature’s use of a term must be considered in relation to the Michigan court’s prior interpretations of a statute, clause, or provision thereof. As stated by the Supreme Court in *Jeruzal v Herrick*:

[T]he legislature is presumed to have known of the judicial interpretation of this Court . . . and, also, to have known that when a statute, clause or provision thereof, has been construed by the court of last resort of this State and the same is substantially re-enacted the legislature adopts such construction, unless the contrary is clearly shown by the language of the act. See *People v. Powell*, 280 Mich. 699, 274 N.W. 372, 111 A.L.R. 721; 25 RCL 1075. [350 Mich 527, 534; 87 NW2d 122, 126 (1957).]

See also, *Longstreth*, 423 Mich at 691, citing *SEMTA v Dep’t of Treasury*, 122 Mich App 92, 103; 333 NW2d 14 (1982).

As noted above, the nature of the Michigan Employment Security Act has been examined by the Michigan courts on numerous occasions and in different contexts. They have uniformly concluded that it is a social welfare program. *Smith*, 410 Mich at 278; *Franks*, 422 Mich at 654; *Larkin*, 89 Mich App at 206; *et al.* Likewise, the Michigan Supreme Court has recognized that Social Security retirement, disability, and survivors’ benefits are “social welfare programs.” *Franks*, 422 Mich at 654. Further, federal authority conclusively establishes the Social Security Act as social welfare legislation. See *Flemming*, 363 US at 611; *Dandridge*, 397 US at 485; *et al.*

We find that the Legislature had no need to define the term to include UI and Social Security benefits. The courts have characterized both programs so frequently as social welfare programs that the need was absent. As such, applying the rule of statutory construction set forth above, we conclude that the term “social welfare benefits” includes Michigan UI and Social Security benefits.

Agency Position

The Agency argues that UI benefits are not social welfare benefits, staking its position on an asserted distinction between “social welfare programs” and “social insurance programs.” It argues that the former is based on “low-income means-tested” criteria, and the latter on other eligibility criteria.

The Agency looks far afield for support for its position, relying on “Federal guidance” from the United States Census Bureau set forth on the Bureau’s website. That guidance categorizes benefit programs

like General Assistance and Supplemental Nutrition Assistance Program (SNAP) as social welfare; UI, Social Security and Workers' Compensation are placed in the social insurance category. However, the Agency provides no context for the "guidance" and the Agency sets forth no reason why this Commission should rely on the Census Bureau as authority.

In advancing this authority, the Agency would have this Commission disregard the controlling rule on statutory interpretation set forth above. That is, that we must give effect to the intent of the Michigan Legislature through an examination of "the language of the statute." *In re Reliability Plans of Electric Utilities*, 505 Mich at 119. Moreover, it would have this Commission disregard that the Michigan Supreme Court has already categorized the various benefit programs and included UI and Social Security in the social welfare benefit category.²¹ Since we are bound by the rules of statutory construction and the Michigan courts, we give the Census Bureau's view no weight.

The Agency also relies on the United States Supreme Court ruling in *Flemming*, 363 US 603; 80 S Ct 1367; 4 LEd 2d 1435 (1960). But that case demonstrates that the Agency has created a distinction without a difference. In that decision, the U.S. Supreme Court referred to social security benefits as both "social insurance" and a "social welfare program":

The Social Security system may be accurately described as a form of **social insurance**, enacted pursuant to Congress' power to "spend money in aid of the 'general welfare,'" *Helvering v. Davis*, supra, 301 U.S. at page 640, 57 S.Ct. at page 908, whereby persons gainfully employed, and those who employ them, are taxed to permit the payment of benefits to the retired and disabled, and their dependents. [*Id.* at 609 (emphasis added).]

Particularly when we deal with a withholding of a noncontractual benefit under a **social welfare program** such as this, we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification. [*Id.* at 611(emphasis added).]

Nonetheless, we find the reference to *Flemming* helpful in understanding both the nature of the Social Security program and Michigan's UI program. The *Flemming* Court explicitly defines Social Security as a "social welfare program." As we noted above, the Michigan Employment Security Act sprang from the Social Security Act. It does not stand alone but exists only as part of the joint federal-state program. See 42 USC 501-506. Accordingly, we find that *Flemming* supports that Social Security, as well as UI benefits, are social welfare benefits.

Next, we address the Agency's position that UI is not social welfare because it is not "means based." It is true that eligibility for UI benefits is contingent upon employment status. See Sections 28 and 48. But at its core, the Act recognizes the link between employment status and economic security. As stated by the Court in *Godsol* in the plainest of terms, the Act was designed to "relieve the distress of economic insecurity *due* to unemployment" 302 Mich at 652 (emphasis added). In *Reed v Employment Security Comm*, the Court stated, "the purpose of the act is to benefit unemployed in *financial straits*..." 364 Mich 395, 397; 110 NW2d 907 (1961) (emphasis added).

²¹ The Census Bureau also places Workers' Compensation in the "social insurance" category, another benefit program that the Michigan Supreme Court has categorized as a "social welfare benefit." See *Franks*, 422 Mich at 654.

The claimants' experiences in these cases demonstrate the devastating impact from loss of employment. The ALJ in Elkhatib found that Ms. Elkhatib had "not received any income for more than one year" prior to filing her application and that she was "impoverished." (ALJ Grant at 4.) The ALJ in Sheffield found that the claimant "had nothing in his checking account, and that he had five dollars in his savings account." (ALJ Poirier at 5.) His only income in the six months preceding the Application was unemployment benefits. (*Id.*) Ms. London earned low-wage income in the period preceding her application, supported a dependent, and reported cash assets of \$171.02. These claimants faced the "serious menace" of "economic insecurity due to unemployment," which would be exacerbated if they were forced to repay UI benefits.

The members of this Commission have reviewed incalculable numbers of appeals from claimants describing their struggles to feed and clothe their children as well as in some cases to escape homelessness, struggles brought on or exacerbated by their unemployment. The undeniable reality is that unemployment leads to economic distress.

Finally, we find no relevance in that certain benefit payments are taxable, and others are not. We find this to be a political decision rather than a reflection on whether those benefits are social welfare. Had the Legislature chosen to make this the distinguishing factor, it could have easily done so. Rather, it chose to use "social welfare benefit," a term that had been used for decades to describe UI.

Public Policy

Finally, we highlight recent data that demonstrates the extent to which UI benefits helped the nation survive the economic crises resulting from the pandemic. According to the National Employment Law Project, UI benefits, including the expansion of benefits during the pandemic, played a crucial role in preventing over two million Americans from falling into poverty.²² Further, a U.S. Department of Health and Human Services Report (February 2022) projected that expanded UI benefits, along with other social welfare programs, reduced poverty in 2021 by 45 percent.²³ During this period of vast unemployment, it is clear that UI fulfilled the declared purpose of the Act, to wit, to protect society from the perils of impoverishment. See Section 2(1).

The Characterization of Benefit Overpayments as Net Household Income is Absurd and Unjust

In closing, we showcase the absurd and unjust result should the term "net household income" as used in Section 62(a)(ii), include UI benefits that have been deemed to be "overpayments." In the cases of Claimants Elkhatib and Sheffield, the UIA has demanded repayment of the very benefits it included in the net household income calculation. (As to Claimant Elkhatib, the benefits for weeks ending January 2, 2021 through June 26, 2021 were included as net household income, and are the subject of the UIA's overpayment demand in the December 16, 2021 determination (Ex. 1E and 2E pp 4-5); as to Sheffield, the benefits for weeks ending March 2021 through July 17, 2021 were included as household net income, and are the subject of the UIA's overpayment demand in the July 22, 2021 redetermination (Ex 1S and 2S pp 11-13).²⁴

²² Traub, *Unemployment Benefits Kept 2.3 Million People Out of Poverty* <<https://bit.ly/3tvj68C>> (accessed October 12, 2023).

²³ Macartney et al, *Federal Economic Stimulus Projected to Cut Poverty in 2021, Though Poverty May Rise as Benefits Expire* <<https://bit.ly/3Q1ySzU>> (accessed October 12, 2023).

²⁴ Claimant London's benefits in the 6 months before her waiver application were not overpayments. She is seeking a waiver of benefits received in an earlier period.

Under Section 62(a), overpayments of UI benefits are debts that are legally enforceable by the Agency using a variety of methods.²⁵ When there is an overpayment, Section 62(a) *requires* the Agency to issue a determination requiring the payment of restitution “within 3 years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement.” Furthermore, the Agency is authorized to take administrative or court action “to recover improperly paid benefits from an individual.” Section 62(a). The Agency may recover the benefits by “deduction from benefits or wages payable to the individual, payment by the individual in cash, or deduction from a tax refund payable to the individual.” *Id.* Notably, in *Farish v Dep’t of Talent & Economic Dev*, unpublished per curiam opinion of the Court of Appeals, issued December 11, 2018 (Docket No. 341350) (*Farish I*), the UIA argued that claimants do not have an “unfettered right” even as to *future* benefit payments, as “UIA’s deduction of monies from those benefits to recoup previous overpayments, penalties, and interest is not inconsistent with their rights,” citing Section 62(a). See p 4.²⁶

As we return to an examination of the financial hardship waiver provision, we note that “statutes must be construed to prevent absurd results, injustice, or prejudice to the public interest.” *Rafferty v Markovitz*, 461 Mich 265, 270; 602 NW2d 367 (1999).

Under the Agency’s construction, UI benefits are income for purposes of the hardship waiver; yet as to overpayments, Section 62(a) mandates that the Agency issue a restitution determination for those same benefits. Thus, the claimant denied the hardship waiver based on the receipt of UI benefits, may later see his or her wages or tax refund garnished when the Agency proceeds with collecting those same benefits. The fact that the Agency possesses the tools to collect these benefits underscores the fact that they are a debt owed to the Agency.²⁷ Thus, under the Agency’s construction, it is entitled to both count UI benefits as income for purposes of the waiver and deprive the claimant of that same income when later, it exerts the authority of the state to collect it. This is both an absurd and unjust result.²⁸

Conclusion

In sum, we hold that UI and Social Security benefits are social welfare benefits within the meaning of Section 62(a)(ii) and may not be included in household income for purposes of calculating whether claimants are entitled to a financial hardship waiver. As applied to Claimants Elkhatib and Sheffield, this brings their income to \$0. For Claimant London, this brings her income to \$9,350.57, low enough to qualify for the waiver.

²⁵ See for example, *Bauserman v Unemployment Ins Agency*, 330 Mich App 545, 553; 950 NW2d 446, 452 (2019), *aff’d*, 509 Mich 673; 983 NW2d 855 (2022), referring to overpayments as claimants’ “debts” which would be satisfied by seizure of claimant’s federal income tax refund.

²⁶ Later, in *Farish II*, 336 Mich App 433, the Court held that the Social Security Act precludes the Agency from deducting penalties and interest from future benefit payments. Deducting overpayments is permissible.

²⁷ The Agency has no established procedure of which we are aware, to reconsider the waiver application post-collection and deduct from “net household income,” the sums paid back by the claimant to the Agency. The Agency’s Manual Sections related to Waiver of Overpayments set forth as Exhibit 5, include no such procedure.

²⁸ One might find the “election of remedies” doctrine worthy of consideration here: “Modern rules of civil procedure, the election of remedy doctrine expressed in the current legal periodicals cited earlier, and the Supreme Court’s decision in *Gruskin v. Fisher*, 405 Mich 51; 273 NW2d 893 (1979), lead us to conclude that plaintiff may simultaneously pursue all of his remedies against the sellers and other defendants herein regardless of legal consistency, *so long as plaintiff is not awarded double recovery.*” *Walraven v Martin*, 123 Mich App 342, 348; 333 NW2d 569 (1983). It certainly seems as if the Agency is awarded double recovery in this scenario, however, the application of the doctrine is speculative here and not for this administrative adjudicative body to apply in this context. Moreover, the typical unrepresented claimant would likely have neither the knowledge of the doctrine nor the means to pursue this avenue when faced with the Agency’s collection action.

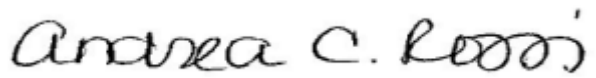
IT IS THEREFORE ORDERED that the ALJ's decisions are AFFIRMED.

The claimants are each entitled to the financial hardship waiver under Section 62(a)(ii) of the Act, and the Agency must cancel all restitution owed by the claimants. If the claimants made any payments after filing their applications, the Agency must refund those payments.

This matter is referred to the Agency for action consistent with this decision.



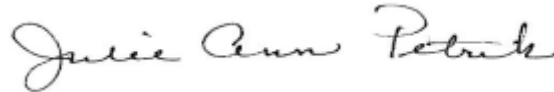
Alejandra Del Pino, Commissioner




Andrea C. Rossi, Commissioner



George Wyatt III, Commissioner



Julie A. Petrik, Chairperson



Mikhail Albuseiri, Commissioner



William J. Runco, Commissioner

LESTER A. OWCZARSKI COMMISSIONER, DISSENTING:

I respectfully disagree with my colleagues. After reviewing the record and considering the parties' arguments, I am not persuaded that unemployment benefits are social welfare benefits within the meaning of Section 62(a)(ii) of the Act.

I do not find the dicta that the Commission majority relies on to be persuasive. Courts and other legal bodies such as this Commission must construe the word in the context of the Act as a whole. The Michigan Supreme Court in *Cassar v Appeal Bd of Mich Employment Security Comm*, 343 Mich 380 (1955) (overruled on other grounds by *Linski v Appeal Bd of Mich Employment Security Comm*, 358 Mich 239 (1959)), stated:

The legislature has prescribed the terms and conditions under which unemployment benefits may be received and has imposed conditions with which plaintiffs have not complied. The right to benefits rests wholly on the statute. [*Id.* at 401.]

While the Act does not define the term “social welfare benefits,” we must still give deference to the statute when determining meanings within it. There is no support in the statute for the Commission majority’s finding that social welfare benefits include UI benefits, which is the matter at issue in this case.

If the Michigan Legislature had intended for unemployment insurance benefits to be excluded from consideration of net household income, it would have explicitly said so in Section 62. Absent such an indication, UI benefits cannot be excluded from the definition of income. Indeed, in other areas of the statute, it appears to be treated as income, such as Section 27b, which states that UI benefits are subject to income tax. I find that it should be treated as such in Section 62 as well.

I further find that general statements by courts when ruling on other matters are not conclusory on the meaning of “social welfare benefits” within Section 62(a)(ii).

Further, I find that means testing is the proper way to determine whether a program is a social welfare benefit. While not defined as such in the statute, this is the definition used by governmental bodies such as the Census Bureau and IRS.¹ The Legislature was likely aware of such definitions and relied on them when crafting the language of Section 62(a)(ii). UI benefits are not means-tested, and therefore, they are not social welfare benefits.

Lastly, the Act also delineates the process for the unemployment insurance system. Benefits are paid from a trust fund that is funded by employer taxes. When it is determined that benefits were paid in error, the Agency must recover the improperly paid benefits to return to the fund. The Agency has a duty to protect the solvency of the fund for the benefit of claimants that are eligible and qualified for UI benefits.

Accordingly, I would reverse the ALJ decisions in these three cases and find that UI benefits are considered income under the Act and must be counted as such for the purposes of Section 62(a)(ii). As the Commission majority has decided otherwise, I must dissent.



Lester A. Owczarski, Commissioner

MAILED AT LANSING, MICHIGAN January 31, 2024

This decision shall be final unless EITHER (1) the Unemployment Insurance Appeals Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME. March 1, 2024

¹ See generally US Census Bureau, *About Program Income and Public Assistance*, <<https://www.census.gov/topics/income-poverty/public-assistance/about.html>> (accessed October 20, 2023).

EXHIBITS

NO	DOCUMENT DESCRIPTION
1E	Screenshot of Claimant Elkhatib's Financial Hardship Waiver Application (3 Pages)
2E	December 16, 2021 nonmonetary Determination finding Claimant Elkhatib ineligible for benefits and accompanying Weeks of OverPayment Form 1301 (7 Pages)
3E	Screenshot of Agency records showing the amount of benefits paid to Claimant Elkhatib during the six-month period prior to the claimant's waiver application (2 Pages)
4E	Claimant Elkhatib's June 16, 2022 Social Security Administration Verification of Supplement Security Income Benefits Letter (2 Pages)
1S	Screenshot of Claimant Sheffield's Financial Hardship Waiver Application (3 Pages)
2S	June 22, 2020 nonmonetary Determination finding Claimant Sheffield not disqualified for benefits, July 22, 2021 nonmonetary redetermination finding the claimant disqualified and accompanying Weeks of OverPayment Form 1301, and a January 25, 2022 denial of redetermination (20 Pages)
3S	Screenshot of Agency records showing the amount of benefits paid to Claimant Sheffield during the six-month period prior to the claimant's waiver application (2 Pages)
1L	Claimant London's Financial Hardship Waiver Application (3 Pages)
2L	July 13, 2020 nonmonetary Determination finding Claimant London ineligible for benefits, accompanying Weeks of OverPayment Form 1301, November 1, 2021 denial of redetermination, and several additional Form 1301 letters (36 Pages)
3L	Screenshot of Agency records showing the amount of benefits paid to Claimant London during the six-month period prior to the claimant's waiver application (2 Pages)
5	Agency Manual Sections 7921, 7922 and 7925, and a March 21, 2018 Agency Memorandum explaining the requirements of a financial hardship waiver and the meaning of "contrary to equity and good conscience." (18 Pages)

WAIVER OF RECOVERY OF OVERPAYMENTS**FYI:**

Per MES Act, Section 62(a), "equity and good conscience" is defined and limited only to:

- (i) Incorrect wages reported by the claimant without the intent to misrepresent when the employer provided either no wages when requested or provided inaccurate wage information that resulted in an overpayment;*
- (ii) When the claimant's disposable household income is at or below the annual poverty guidelines and the claimant applies for a waiver due to financial hardship (indigence); and*
- (iii) An improper payment is the result of an administrative or clerical error by the UIA.*

REFER TO:

Manual Section 7922, Waivers Due to Financial Hardship, for detailed instructions on how to identify an overpayment account on which a judgment has been entered against a claimant and how to process an allowed waiver request involving a judgment.

Section 62(a) of the MES Act provides that recovery of improperly paid benefits (restitution) shall be waived by the Unemployment Insurance Agency (UIA) if the improper payment was not the fault of the claimant and if the UIA finds that requiring repayment would be contrary to "equity and good conscience."

A. Cases, Programs Where This Section Does Not Apply

1. Collection of an overpayment that has been established as a result of intentional misrepresentation **cannot** be waived for any reason.
 2. Recovery of overpayments under some Federal programs cannot be waived using the criteria covered in this section:
 - Disaster Unemployment Assistance (DUA) overpayments cannot be waived for any reason. For details, refer to the DUA Operating Procedures, Section 390.
 - Waivers of overpayments of federally funded extended benefits and Trade Readjustment Allowances (TRA) overpayments are restricted to cases where repayment would cause extraordinary financial hardship. For details concerning federally funded extended benefits overpayments, refer to the EUC – Overpayments Q & A, 0012 EUC. For details concerning TRA overpayments, refer to TRA Manual, Section 3565.
 3. Sometimes an overpayment case has been taken to court and a Judgment ordering repayment is issued against the claimant by the court. This action extends the statute of limitation for collection to ten years.
- A request for waiver on a **non-fraud judgment account** that meets the guidelines for waiver is processed by:
- a) having the individual complete Form UIA 1795, *Affidavit of Financial Condition*,
 - b) referring the matter by reassigning the work item to the Benefit Overpayment Collection (BOC) Unit manager, and
 - c) sending an email to the BOC manager indicating a work item has been reassigned to the unit.

WAIVER OF RECOVERY OF OVERPAYMENTS (continued)

If financial hardship is established, these cases are referred to the Attorney General's office for petitioning the court to set aside the judgment.

B. General Information on Waiver Criteria

The criteria for appropriate waiver of recovery of overpayments are listed below. A waiver cannot be allowed if a case does not meet the requirements considered appropriate under a listed criterion.

C. Administrative or Clerical Error

The Agency interpretation of administrative or clerical error contained in this section is as follows:

Benefits were overpaid because of an Agency administrative or clerical error. An administrative or clerical error is any mistake made by an Agency employee in the performance of a duty not requiring the making of a judgment which results in an overpayment of benefits. When an administrative or clerical error occurs the claimant could not reasonably be expected to know that an overpayment was made.

1. A waiver of overpayment due to administrative or clerical error is NOT APPROPRIATE:

- Where there is a disqualification due to intentional misrepresentation; or
- When a redetermination, Administrative Law Judge (ALJ) decision, Michigan Compensation Appellate Commission (MCAC) decision, or court decision reversing a prior determination, redetermination, or decision is issued informing the claimant of a disqualification or ineligibility; or
- When a claimant alleges that he/she was either misinformed or not informed of requirements, but facts show that correct information was provided in the *Unemployment Benefits in Michigan – A Handbook for Claimants* (1901 booklet) or other written or verbal instructions, or the claimant refused a written 1901 booklet and agreed to read it online.

WAIVER OF RECOVERY OF OVERPAYMENTS (continued)

NOTE: In each of the above cases, the claimant **has knowledge** that the benefit payment was incorrect.

Additional situations where a waiver of overpayment due to administrative or clerical error is **NOT APPROPRIATE** are:

- When an error in a nonmonetary determination is an error of law rather than an administrative or clerical error, i.e., an error in judgment in the application of the law to the case or a misapplication of the law.
- When an overpayment exists under DUA, federally funded extended benefits, and TRA (see A above).

2. Cases where a waiver of overpayment due to administrative or clerical error is **APPROPRIATE**:

- A miscalculation of the claimant's entitlement (weekly benefit rate or the number of weeks allowed) when the UIA had proper information from the employer and claimant is an administrative or clerical error. In such case, the miscalculation would occur when the monetary (re)determination is made.
- Benefits are paid on an improperly established benefit year (i.e., BYB established based on UIA staff entering incorrect wages or the dollar amount on an AEQ claim was entered as meeting requirements when the actual amount of earnings was insufficient).
- Benefits are paid after exhaustion of benefit entitlement because the balance was improperly adjusted.
- Benefits were paid and the requirements to register with Michigan Works! Agency (MWA) or to seek work were not explained to the claimant. If a claimant did not satisfy these eligibility requirements because of Agency failure to inform or because of misinformation from the Agency, and was paid benefits, a nonmonetary determination would be required, and restitution would be set up. The overpayment should be waived if evidence indicates that the claimant did not receive, or agree to review online, the 1901 booklet and therefore was **without knowledge** that the benefit payment was incorrect.

WAIVER OF RECOVERY OF OVERPAYMENTS (continued)

The table provided on the next three pages illustrates situations where a waiver of recovery of overpayment is considered. Each example provides the facts of a common case of overpayment and a "YES" or "NO" to indicate whether recovery should be waived, followed by an explanation of the waiver decision.

WAIVER OF RECOVERY OF OVERPAYMENTS (continued)

ADMINISTRATIVE OR CLERICAL ERROR EXAMPLES

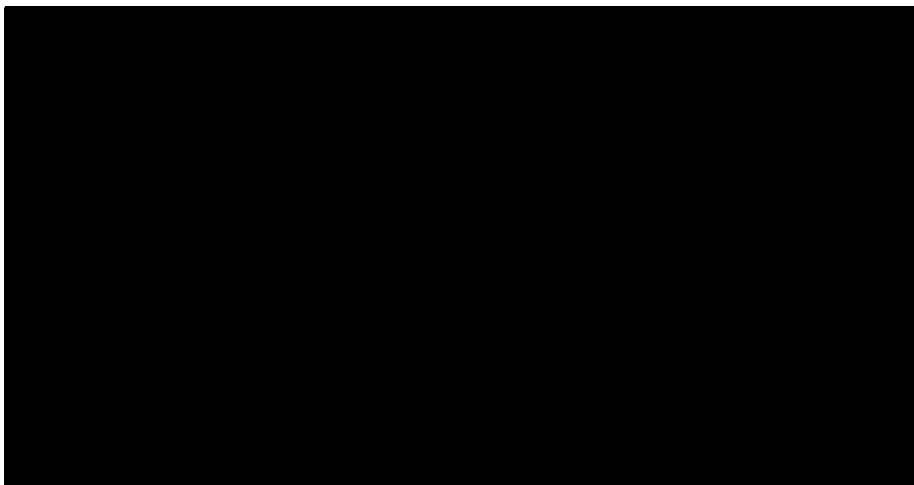
NO.	EXAMPLE	WAIVE	EXPLANATION
1.	Claim allowed, WBA \$293, 20 weeks. Claimant paid 4 weeks. Proof of wages entered by UIA staff incorrectly. Employer protests timely, review of wage data shows incorrect entitlement. Restitution set up.	YES	If wages had been entered correctly, the overpayment would not have occurred. Administrative or clerical error by the Agency exists (even if the protest was untimely.)
2.	Claimant paid past BYE date. A new BYB cannot be established and no extended benefit programs are in effect. Restitution set up.	YES	MiDAS will prevent a scenario of this nature. However, if this occurred before the institution of MiDAS, administrative or clerical error by the Agency exists.
3.	Claimant allowed 15 weeks but paid for a week after exhaustion. Restitution set up.	YES	MiDAS will prevent a scenario of this nature. However, if this occurred before the institution of MiDAS, administrative or clerical error by the Agency exists.
4.	Claim set up based on wage information provided by the claimant but no proof of wages is requested by the Agency. Restitution set up.	YES	If the Agency had notified the claimant that proof of wages was required to establish a claim, wages would have been verified and data entered correctly, and overpayment would not have occurred. Administrative or clerical error by the Agency exists.
5.	Claimant did not register for work with MWA timely after BYB date and states he/she was not told to do so. Information indicates a 1901 booklet was given or the claimant agreed to read it online, and the claimant was referred to MWA. Claimant held ineligible for period in which he/she was not registered for work. Restitution set up.	NO	Claimant was informed of requirements to register when he/she received the 1901 booklet. This handbook provides the correct information to the claimant. No administrative or clerical error by the Agency exists.

WAIVER OF RECOVERY OF OVERPAYMENTS (continued)

NO.	EXAMPLE	WAIVE	EXPLANATION
6.	Claim set up based on claimant proof of wages (35 weeks, \$600 per week). Actual wages were \$300 per week. Claimant overpaid WBA for two weeks. Wage information is received from the employer and data entered during the fourth week. Intentional misrepresentation is found. Restitution is set up.	NO	Employer did not provide wage information timely. However, claimant had knowledge of true wages and the proof of wages was incorrect. No administrative or clerical error by the Agency exists. The overpayment is due to intentional misrepresentation. No credit is given to the employer prior to the date of protest due to failure to protest timely.
7.	Claimant received a monet and 1901 booklet. Claimant reported earnings on Form UIA 1785-1 but they were not data entered. Claimant had excessive earnings for one week. Restitution set up.	NO	Overpayment resulted from failure to correctly enter certification information. However, administrative or clerical error for waiver cannot be applied because claimant could reasonably be expected to know there was an overpayment.
8.	Claimant files A/C claim by phone. MWA registration is inactive. Claimant is not instructed by staff to register with MWA. Claimant held ineligible for two weeks and restitution is set up.	YES	Failure to inform claimant when registration must be updated is administrative or clerical error by the Agency.

WAIVER OF RECOVERY OF OVERPAYMENTS (continued)

NO.	EXAMPLE	WAIVE	EXPLANATION
9.	Claimant works for an employer for whom there is a 45 day registration/seeking work waiver on file for most employees. Claimant files new claim and is told by the Agency that he/she does not have to register with MWA or seek work. However, claimant is not in the group covered by this waiver. Claimant held ineligible for 2 weeks and restitution is set up.	YES	Claimant was given <u>misinformation</u> by UIA. Administrative or clerical error by the Agency exists.
10.	TRA, RTAA or federally funded extended unemployment compensation claim overpaid.	NO	Waiver of TRA, RTAA and federally funded extended benefit overpayments is limited to cases where repayment would cause extraordinary financial hardship. Administrative or clerical error cannot be applied.
11.	Claimant was overpaid on DUA claim.	NO	DUA overpayments cannot be waived.
12.	Claimant was held ineligible for a week due to vacation pay. Restitution was set up. (The ineligibility was incorrect as the vacation pay was not allocated to a specific week. The claimant was eligible for the week in question.)	NO	No administrative or clerical error by the Agency exists. The determination was an <u>error in the application of the law</u> . Claimant has the right to protest the determination or the Agency could reopen within a year.
13.	Claimant filed a new claim and indicated he/she was fired. Claim was entered as a lack of work by staff in error and this was not corrected when a Form UIA 1575, <i>Monetary Determination</i> , was received from the employer. Three weeks were paid prior to adjudication which resulted in a disqualification. Restitution set up.	YES	If separation reason was entered correctly by staff, payment on the claim would have been delayed pending adjudication of the separation and the overpayment would not have occurred. Agency administrative or clerical error exists.

WAIVER OF RECOVERY OF OVERPAYMENTS (continued)**F. Indigence (Financial Hardship)**

Certain overpayments may be waived as of the date of application because, if proven, repayment would cause financial hardship for the individual. In order to be considered, the overpayment must not:

- Meet the requirements for a waiver of recovery under **any** other reason listed in this section, or
- Be the result of intentional misrepresentation.

Financial hardship exists if the individual's situation is equal to being a situation of "indigence." **Because of the complexity of the factors to be considered when issuing financial hardship waivers, detailed instructions are provided separately in Manual Section 7922.** Manual Section 7922 contains examples illustrating the use of this criterion.

WAIVERS DUE TO FINANCIAL HARDSHIP**A. Financial Hardship/Indigence Waiver Requests**

An individual may request a waiver of recovery for the **balance** of an overpayment due to financial hardship on an established overpayment account that does not involve fraud. The waiver application is Form UIA 1795, *Statement of Financial Condition*, and is not required to be notarized.

An individual requesting a waiver due to financial hardship must disclose his/her current financial condition on Form UIA 1795 or through his/her MiWAM account.

A waiver application can only be submitted once every 6 months. If denied, the claimant can protest. The protest must address the original application. For example, an individual submits Form UIA 1795 on 10/17/2017 requesting a waiver of restitution. The request is denied. The claimant protests on 11/7/2017 and submits a new Form UIA 1795. The protest would only apply to the application submitted 10/17/2017. The new Form UIA 1795 filed on 11/7/2017 would not be considered a new request, but rather a protest. If the waiver is allowed as a result of the protest, a redetermination should be issued.

If the waiver is granted, proceed with the instructions in Part C1 of this manual section.

If the request is denied proceed with the instructions in Part C 2 of this manual section.

UI staff is responsible for issuing the (re)determination on Form UIA 1302, *Notice of (Re)Determination*.

REFERENCE:

Refer to Manual Sections 7921, Waiver of Recovery of Overpayments and 7925, Processing Waivers of Recovery of Overpayments for more details regarding waivers due to financial hardship.

IMPORTANT:

Section 62(a)(ii) of the MES Act, provides that only the balance due as of the waiver application date may be waived. There are no refunds of repayments made prior to the date of the application.

WAIVERS DUE TO FINANCIAL HARDSHIP (continued)**NOTE:**

Fraud overpayments are not eligible for waiver consideration. *If the overpayment contains fraud and non-fraud balances, only the non-fraud portion of the balance can be waived if the individual meets the financial guidelines.*

NOTE:

Review the notes on the CRM tab to determine if a judgement exists. If so, refer to Section D.

FYI:

It is important to discuss the reason for missing or inaccurate information on Form UIA 1795 with the claimant. Refer to Manual Section 6606, Intentional Misrepresentation - General. Denials issued due to intentional misstatement cannot be reversed when the claimant later provides corrected information with his/her protest. All protests are based on the original affidavit and any information obtained as a result of a 48-hour call, if one was placed.

- Review the account to determine if there is fraud on the overpayment or if a judgement exists on the account. If all of the claimant's overpayment was established due to fraud, or there is a judgement against the claimant for the entire account balance, tell the claimant that he/she does not qualify for a waiver because the overpayment was established due to fraud or because there is a judgement for the balance due. If the claimant has some overpayments that were not established based on fraud or that are not part of a judgement, tell the claimant that he/she can apply for a waiver of the non-fraud portion of the overpayment or the portion of the overpayment that is not part of the judgement.
- Briefly review Form UIA 1795 with the individual. Inform the individual to provide complete and accurate information.
- Emphasize to the claimant the importance of the MONTH/YEAR column in Item 5. These dates must be the six most recent **completed** months prior to the date Form UIA 1795 is signed.

EXAMPLE: If the Form is given to the claimant on April 26th of this year but not completed and signed until May 7th of this year, then the entry in Item 6 must be November of last year through April of this year.

- Advise the claimant that the waiver application can be completed in MiWAM, is available online, or send the individual a copy of the Form UIA 1795 by mail.

Annotate your conversation with the claimant on the Customer Relations Manager (CRM) Tab in MiDAS.

WAIVERS DUE TO FINANCIAL HARDSHIP (continued)**B. Evaluation of Waiver Request Information****NOTE:**

If the overpayment contains fraud and non-fraud balances, only the non-fraud portion of the balance can be waived if the individual meets the financial guidelines.

The decision on whether to allow a waiver of the balance of a non-fraud overpayment due to financial hardship is based on information provided by the claimant on Form UIA 1795. Upon receipt of the form, the UIE must create an overpayment waiver case on the claim in MiDAS. If there is any missing or inaccurate information on the form, the UIE must place a 48-hour call to the individual to obtain or clarify the information.

If the claimant is eligible for consideration of a waiver, staff must check to see if one or more restitution accounts exist with a balance owed. Staff must answer the following questions on the *Adjudication Tab* on the Overpayment Waiver case in MiDAS.

1. *Was the restitution established due to fraud?* If no, continue. If yes, the request is denied.
2. *Is there an open protest or appeal related to the restitution?* If no, continue. If yes, the request is denied.
3. *Does the claimant have a judgement?* If no, continue. If yes, *has the restitution been forgiven or set aside by the court?* If no, the request is denied. If yes, continue.
4. *Has evidence of financial hardship been established?* If no, deny the request. If yes, allow the waiver.

IMPORTANT:

The disclosed value, if any, of food stamps, Supplemental Nutritional Assistance Program (SNAP), and welfare benefits should not be included as 'income' during the evaluation of Form UIA 1795 for financial waivers. See, 7 USC 2017(b).

UI staff will evaluate the waiver application considering the following:

1. Dependents listed are those allowable under Section 27 of the MES Act. Check the number of dependents claimed by selecting the Monetary Determination tab on the Claim tab from Account Springboard for discrepancies. If the claimant listed 2 dependents in MiDAS and 4 on the Form UIA 1795, place a 48-hour call to the claimant to inquire about the discrepancy.

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WAIVERS DUE TO FINANCIAL HARDSHIP (continued)

- a. If a benefit year is in effect, compare the number of dependents allowed on that claim with those claimed on Form UIA 1795. Place a 48-hour call to the claimant to inquire about any discrepancy and annotate the claimant's reply on the case as a Case Note. The UIE should annotate whether the explanation was or was not reasonable and why.
2. All income of the claimant, his/her spouse, and all dependents, from all sources for the last six completed months, must be reported.
 - a. Check the *Transaction* tab from the *Financial* tab on the Customer Springboard to determine if UI benefits were received during the six months shown on Form UIA 1795. Make sure the UI benefit amount is accurately represented in consideration of income.
 - b. Check the *Wage Records* tab on the *Search* springboard to verify employment for part of this period. Use the Social Security Numbers of the individual and their spouse and dependents listed on the application. The amount of gross wages shown on the wage reports may not be the exact amount reported by the individual. The amount may be less than gross wages reported for the same time period but should be reasonable in light of deductions for taxes and any other deductions required by law such as child support.

If there is a question about whether the disposable net income is reasonable in light of gross wages reported, place a 48 hour call to the individual. Annotate the call and response. If no response is received, a decision will be made using best available information. The information reported by the individual on UIA Form 1795 is presumed to be accurate, unless evidence suggests otherwise. If questions remain, discuss with a manager for further direction.

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WAIVERS DUE TO FINANCIAL HARDSHIP (continued)

IMPORTANT:

Only the balance due as of the waiver application date may be waived. There are not refunds of repayments made prior to the date of application. All refunds are processed in BOC and must be completed prior to issuing a nonmonetary determination allowing a financial hardship waiver.

NOTE:

The chart shows the yearly income guidelines for a family size based on dependents. When considering the waiver request, staff must be sure to divide the yearly income limit by 12 to get the monthly income amount. The claimant's average net household income must be at or below the monthly amount for the waiver to be granted.

- c. If the claimant indicates he/she worked for the employer but no wages are reported, verify the wages in MiDAS or contact employers using Form UIA 1707, *Request for Information Relative to Possible Ineligibility or Disqualification*, via the Additional Questions sub-tab on the case.

Add totals in Items 5A, B, and C on Form UIA 1795 and then divide by 6 to get an average monthly net income. Compare with the income guidelines shown below. If the average monthly net income for dependents allowed exceeds the guidelines, the waiver request should be denied.

If the average monthly net income does not exceed the guidelines, the waiver request should be granted.

GUIDELINES – INCOME WAIVER LIMITS

DEPENDENTS (INCLUDE CLAIMANT)	LIMIT ON MAXIMUM AVERAGE YEARLY INCOME
1	\$18,210
2	\$24,690
3	\$31,170
4	\$37,650
5	\$44,130
6	\$50,610
7	\$57,090
8	\$63,570

(These annual guidelines are effective as of January 31, 2018)

- For each additional dependent beyond a count of 8, add \$6,480. SOURCE: Department of Health and Human Services (HHS) Poverty Guidelines for 2018. These guidelines are effective for requests received on and after the date of this manual revision.

UNEMPLOYMENT INSURANCE
OVERPAYMENTS

7000-7999

7922

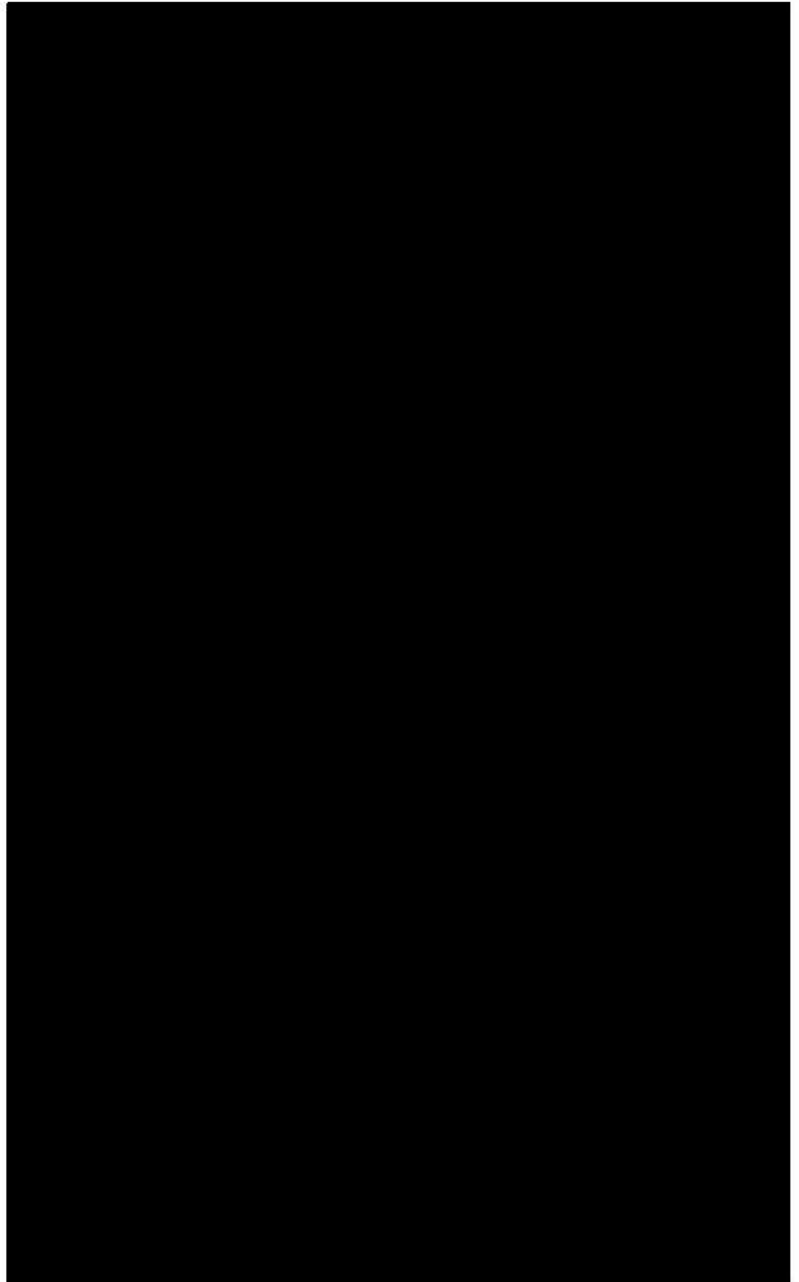
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WAIVERS DUE TO FINANCIAL HARDSHIP (continued)

3. If the average monthly net income exceeds the income guidelines above, the request is denied.



PROCESSING WAIVERS OF RECOVERY OF OVERPAYMENTS

This section provides instructions on the processing of waivers and denial of waivers on new and established restitution accounts. It also provides a chart illustrating the facts in common overpayment situations and the actions required.

The waiver of repayment of an overpayment will be determined on most restitution accounts when the restitution is initially set up. Whole and half week balances are not restored when repayment is waived. The claimant must not be paid in excess of the Maximum Benefit Amount allowed under Section 27(d) of the MES Act.

SEE:

*Manual Section 7921,
Waiver of Recovery of
Overpayments.*

Exceptions: Disaster Unemployment Assistance (DUA);
Emergency Unemployment Compensation (EUC);
Reemployment Trade Adjustment Assistance
(RTAA); and Trade Readjustment Allowances (TRA).

A. Waivers on New Restitution Accounts

Except for cases where a waiver cannot be considered on the initial determination of an overpayment (see Manual Section 7921), the waiver of recovery under administrative or clerical error and 3 must be considered when restitution is data entered.

1. Allowed Waivers

If only part of the total overpayment meets the criteria for a waiver, only that part of the overpayment can be waived. When the (re)determination is completed in MiDAS, the appropriate waiver statement will be included on the (re)determination.

2. Denied Waivers

Unless an allowed waiver is specifically indicated, system generated overpayment (re)determinations include the following statement:

"Reason for overpayment does not come within the criteria for waiver. If repayment will cause extraordinary hardship, you may request a waiver due to your financial status in person, via your MiWAM account or by mail."

PROCESSING WAIVERS OF RECOVERY OF OVERPAYMENTS (continued)**B. Waivers on Established Restitution Accounts****REFER TO:**

Manual Section 7922 for detailed instructions for processing allowed and denied requests for waivers of repayment of overpayment accounts due to financial hardship.

1. Indigence (Financial Hardship)

Most waivers of recovery on existing accounts are due to Indigence (Financial Hardship). In these cases, a nonmonetary determination must be issued.

An Overpayment Waiver issue is opened when a completed Form UIA 1795, *Affidavit of Financial Condition*, is received. The determination is issued in MiDAS (DQ or NDQ result) and sent to the claimant. **A copy is also sent to the employer.** If allowed, MiDAS will automatically cancel the remaining balance owed on restitution allowable under the waiver. Only the amount of the overpayment being waived (**the balance existing at the date of application for the waiver**) is included on the nonmonetary determination.

NOTE: If the overpayment waiver is allowed after a portion of the restitution is recouped or repaid, only the portion of unpaid restitution is waived. There is no refund on the recouped/repaid restitution unless it was recouped or repaid after the waiver application date. See Section 62(a)(ii) of the MES Act.

2. Administrative or Clerical Error OR Lack of Proper Information from Employer

If a waiver of recovery of overpayment was denied on the original determination in error under Administrative or Clerical Error or Lack of Proper Information from the Employer, a redetermination must be issued to allow a waiver.

C. Application Examples

The chart on the following page shows examples of factual situations and illustrates:

1. When an overpayment account should be set up;
2. When recovery should be waived;
3. When credit should be given to the employer; and
4. If a positive adjustment should be issued to the claimant.

PROCESSING WAIVERS OF RECOVERY OF OVERPAYMENTS (continued)**APPLICATION EXAMPLE CHART**

		FACTS			ACTIONS		
No.	Employer Information Timely?	Information Accurate/ Complete?	Protest Timely or Other Reason for Action?	Set Up Restitution for Overpayment	Waive Recovery/ Criterion Number	Credit Employer	Payment Adjustment for Underpayment
1.	YES	YES BUT ENTERED INCORRECTLY	TIMELY	YES	YES ADMINISTRATIVE OR CLERICAL ERROR	YES	YES
2.	YES	YES BUT ENTERED INCORRECTLY	NOT TIMELY BUT GOOD CAUSE	YES	YES ADMINISTRATIVE OR CLERICAL ERROR	YES	YES
3.	YES	YES BUT ENTERED INCORRECTLY	NOT TIMELY AND NO GOOD CAUSE	YES *	YES ADMINISTRATIVE OR CLERICAL ERROR *	YES *	YES *
4.	YES	YES BUT ENTERED INCORRECTLY	NO PROTEST	YES	YES ADMINISTRATIVE OR CLERICAL ERROR	YES	YES
5.	YES	NO	TIMELY	YES (for weeks prior to receipt of correct info)	NOT APPLICABLE	NO **	YES **
6.	YES	NO	NOT TIMELY BUT GOOD CAUSE	YES (for weeks prior to receipt of correct info)	NOT APPLICABLE	NO **	YES **
7.	YES	NO	NOT TIMELY AND NO GOOD CAUSE	NO (for weeks prior to receipt of correct info)	NOT APPLICABLE	NO	YES ***
8.	YES	NO	NO PROTEST	NO	NOT APPLICABLE	NO	YES ***
9.	NO	NO	NOT APPLICABLE	NO ****	NOT APPLICABLE	NO	YES ****

* Improper payment no matter who discovers it. Non-fraud restitution must be set up or adjustment processed within one year of improper payment.

** Considered as honest error on part of employer if protested timely or with good cause. (Per Section 20(a) of the MES Act, if an employer has engaged in a pattern of providing untimely or inadequate information, then the employer's account will not be credited.)

*** Lack of adjustment in this case would provide employer with incentive to underreport wages.

**** If restitution is subsequently an issue, payment for weeks prior to the week the employer's information is received are proper. Restitution or adjustment needed for week of receipt and any later weeks paid at improper rate.



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TALENT AND ECONOMIC DEVELOPMENT
TALENT INVESTMENT AGENCY
UNEMPLOYMENT INSURANCE

ROGER CURTIS
DIRECTOR
WANDA M. STOKES
DIRECTOR

Date: March 21, 2018

Subject: WAIVERS DUE TO FINANCIAL HARDSHIP

UI shall waive recovery of improperly paid benefits and any interest if repayment would be contrary to equity and good conscience.

Effective March 21, 2018, *contrary to equity and good conscience* means any of the following:

- The claimant provided incorrect wage information without the intent to misrepresent, and
- The employer provided either no wage information upon request or provided inaccurate wage information that resulted in overpayment.
- The proper payments resulted from an administrative or clerical error made by UI.
- The claimant's average net household income and household cash, assets, exclusive of social welfare benefits during the 6 months prior to the waiver application date, is at or below 150% of the annual poverty guidelines established by the Department of Health and Human Services.

The claimant may request a waiver of recovery on restitution established due to financial hardship that does not involve fraud or where there is no judgement requiring the claimant to repay the balance. To request a waiver, the claimant must complete Form UIA 1795, *Statement of Financial Condition* or complete the application process in MiWAM.

The following changes apply to financial waiver applications as of March 21, 2018:

- Form UIA 1795 does not need to be notarized,
- If the Form is incomplete or there is a discrepancy found when processing the request, staff are required to make a 48 hour call to obtain any missing information or address the discrepancy. The claimant's response or lack of response must be annotated on the case.
- Only the claimant's net "household" income and "cash assets" are considered for purposes of determining the waiver. For purposes of the waiver, "household" means a dependent and "cash assets" mean a checking and savings account.
- A waiver request can only be submitted once every 6 months.

Please refer to Manual Section 7922, *Waivers Due to Financial Hardship*, for more detailed instructions regarding the waiver process.

If you have any questions, please contact Benefit/Tax Procedures Unit at hunterl4@michigan.gov.