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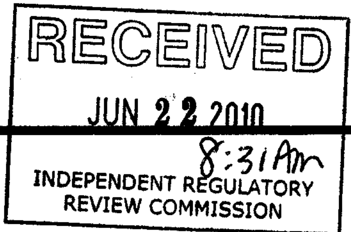

From: Schalles, Scott R.
Sent: Tuesday, June 22, 2010 7:34 AM
To: IRRC
Subject: FW: Comments on Proposed Rulemaking No. 12-74 by Legal Services Advocates
Attachments: Comments on Ch 65 regulations, 6-2010.doc

From: Sharon Dietrich [mailto:SDietrich@clsphila.org]
Sent: Monday, June 21, 2010 3:49 PM
To: cpontz@state.pa.us; screegan@state.pa.us
Cc: Schalles, Scott R.; Totino, Michaele; Vito, Sandi; Beaty, Patrick T; Vicki DiLeo; Manganello, Joanne; Kevin Burke; lea and allan judson; Donald Marritz; David Hill
Subject: Comments on Proposed Rulemaking No. 12-74 by Legal Services Advocates

The following comments are submitted by the undersigned legal services advocates on Proposed Rulemaking No. 12-74, Department of Labor and Industry, 34 Pa. Code, Part II, Subpart A, Unemployment Compensation, Chapter 65, Employe Provisions

Legal services advocates are pleased that the Department of Labor and Industry ("the Department") is updating its regulations to conform to changes in practice and systems administration. More than a decade has passed since the first UC Service Center opened and the local offices started to close. These regulations are long overdue, and we support the package overall. We also believe that in large part, the regulations are fair and appropriate. However, we do point out below several ways in which they could be improved.

Sect. 65.11 – Work registration; effective period.

We strongly support subsection (a), which provides a simple procedure for formal work registration and establishes that work registration remains in effect for the duration of the claim.

Sect. 65.41 – Filing methods.

Overall, we are pleased with the flexibility that the regulations provide for alternative methods of filing applications and claims. These alternatives provide claimants with flexibility to select a form of communication that is most comfortable for them and recognize that some claimants are less facile with or may not have access to technological forms of filing, even telephones.

However, there is one major form of filing that should be, but is not, permitted: filing at a Career Link office. By contrast, appeals are permitted to be filed at "a workforce investment office" (existing Section 101.81(c)). Claimants' advocates have been asking for such services to be provided at Career Links since the UC offices were closed in favor of the UC Service Centers. We continue to believe that some claimants would be better served by having in-person access to staff that may be able to help them when needed. Moreover, if applications could be filed at Career Links, unemployed persons would have more incentive to go to these offices and would then be exposed to reemployment services that could help them better seek new employment. Finally, because Career Links are designed to be "one-stop" centers, having them accept UC applications makes sense from a service-delivery perspective. Thus, we would like to see the regulation amended to provide for in-person filing at Career Link offices.

We are pleased that subsection (a) provides for filing of applications by mail. However, subsection (b) does not provide for the filing of claims by mail, which we think it should. In particular, mail claims have often been an accommodation of persons who do not speak English, particularly if their primary language is not Spanish. The telephone claims system and internet claim systems do not accommodate these claimants.

We believe that subsection (c), the methods for determining date of filing, is fair. It mirrors existing Section 101.82, time for filing appeal from determination of the Department.

Subsections (d) and (e) allow the Department to provide new methods of filing or to suspend any current method when it determines "in its discretion" that the method is "obsolete, impractical, inefficient, or infrequently used." We believe that the Department should propose regulations with an opportunity for public comment before any such change is implemented. Moreover, subsection (d) provides, "If the Department prescribes an additional method to file an application or claim, it will designate the date on which an application or claim is filed by that method." It is not clear when or how that date is designated, determined or communicated to anyone.

Sect. 65.43.1 – Extended filing.

Subsection (a) provides that a partially employed claimant can file a claim "not later than the last day of the second week after the employer paid wages for that week." It appears to replace existing Section 65.33(a)(7), which permits a four-week period for filing in such circumstances. We, of course, prefer the prior longer period of time. Also, we find the drafting of this provision difficult to read.

Subsection (e) lists reasons for extended filing and the number of weeks for which extended filing for each reason will be allowed. We have several comments on these provisions, including suggestions for reasons that should be added.

- The second reason, the claimant tries to file by phone, internet or fax but there is a malfunction, must occur on the last day that the claimant could timely file. We disagree with the requirement that the failure to file must occur on the last day. What if a claimant tried every day all week except the last day? And how is it determined that this attempt was made?

- We believe that the examples should specifically include two difficulties that have been experienced with the electronics methods of filing applications and claims since they existed: inability to get through to the UC Service Centers because of high call volume or technological problems, and claimant difficulties in using the telephone claims system (also known as the "PAT system").

- Persons with limited English proficiency have fared especially poorly with the UC Service Centers and the PAT system. Language barriers should be a specifically listed basis for extended filing, and for more than the 2-week period provided by most of the exceptions. Such an accommodation is required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

Subsection (f)'s provision for a period of an extension as a result of a claimant's incapacity as a result of illness or injury perhaps should be incorporated into subsection (e). Otherwise, the last reason in subsection (e), which is a catch-all and is limited to two weeks, could be read as inconsistent with subsection (f).

Sect. 65.56 – Withdrawing an application for benefits.

We find the drafting of this section to be very confusing, to the point of not understanding what it means at all. This is of particular concern to us, because of continuing disagreements over the recoupment of overpayments and whether they are characterized as fault or non-fault overpayments (which carry very different recoupment rules and penalties).

In addition, there seem to be many steps to with an application and a benefit year. What would happen if a claimant, instead of requesting to withdraw, just stops filing claims until the benefit year expires?

Sect. 65.73 – Full-time work.

We generally approve of the Department's initiative to define this term (which relates to whether the claimant is "unemployed" under the UC Law) and the primary method of averaging set forth in subsection (a)(1)(i).

However, subsections (a)(2) and (a)(3) undermine the pure averaging system and disadvantage the claimant. Subsection (a)(2) excludes any hours in a particular week that exceeds the "customary number" of hours worked for the employer in the base year. Subsection (a)(3) deals with work in multiple week cycles; if a claimant does not work in any weeks during that cycle, those weeks are still counted. We do not understand the basis for these exceptions to the general rule, and we question administratively how they can be implemented by the Department.

Needed regulation: both claimants and employers should have 15 days to contest an adverse decision.

While the proposed regulations do concern the filing of applications and claims, they neglect a matter of timeliness that constitutes a glaring inequity between claimants and employers. If a determination is rendered against a claimant, he or she has 15 days to file an appeal, and this short time frame is strictly enforced. However, if the UC Service Center finds in favor of a claimant when an employer has not initially opposed a claim, benefits are paid without an appealable determination. If the employer decides to contest the claim after benefit payments have begun – which sometimes happens months later – the UC Service Center will issue a determination ruling against the claimant well beyond 15 days of the initial decision to pay benefits. While both claimants and employers have 15 days to appeal an adverse determination, the fact that no determination is rendered upon payment of benefits in these cases means that the employers actually have a much longer period to contest the *de facto* decision of the UC Service Center to grant of benefits.

Under the current practice, when an employer does not respond to notice of a claim promptly, the UC Service Center starts payment of benefits if the claimant's statement about the basis of the job separation appears not to be disqualifying. However, a written, appealable determination is not rendered under those circumstances. If the employer later decides to contest the claim – or if the UC Service Center revisits eligibility of its own accord – an appealable determination against the claimant can be issued, benefit payment is stopped, and an overpayment is assessed.

This process lacks the rigor that is expected in an adjudicatory process and is patently unfair. The claimant cannot be sure that his or her claim will continue to be paid, even months after it has begun. Moreover, not only are benefits stopped, but an overpayment is assessed. Legal services advocates have seen many cases of huge overpayments as a result of this process. The process also results in employers not responding to requests for information from the UC Service Centers until after an adverse decision against them.

The regulations should be amended to provide that employers have a specific period of time to respond to a notice of a claim. If they do not, an appealable determination should be rendered. After the 15-day appeal period from the determination, neither claimant nor employer should have further recourse if they have not

taken an appeal, nor should the UC Service Center be able to change its decision. A claimant receiving benefits should be able to rely on finality of the decision at some point.

For further discussion of these points, contact Sharon M. Dietrich, Esquire at 215-981-3719 or sdietrich@clsphila.org .

Submitted by:
Sharon Dietrich, Community Legal Services, Inc.
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Donald Marritz, Regional Housing Legal Services

Sharon M. Dietrich
Managing Attorney for Employment and Public Benefits
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
(direct) 215-981-3719
(fax) 215-981-0434
sdietrich@clsphila.org

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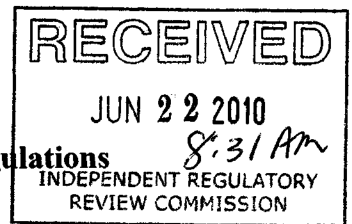

Comments by Legal Services Advocates on Proposed Ch. 65 Regulations

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