

Appendices

Appendix D: Sample Letter Requesting Waiver

[Date]

Department of Unemployment Assistance
19 Staniford Street
Boston, MA 02114

Re: XXXXX XXXXX's (SSN: 000-00-0000) Request for a Waiver of an Overpayment

To Whom it May Concern:

I am submitting a request for a waiver of an overpayment on behalf of my client XXXXX XXXXX. Enclosed please find a copy of the statement of overpayment and Ms. XXXXX's waiver request. As explained in detail below, Ms. XXXXX is entitled to a waiver as she meets the standards set forth at 430 CMR 6.05 as the recovery of the overpayment would defeat the purpose of benefits otherwise authorized and recovery would be against equity and good conscience.

Brief Factual Background

Ms. XXXXX received a statement of overpaid account alleging she was overpaid unemployment insurance. Ms. XXXXX applied for UI benefits in January of 2011 and received benefits from April through the end of June. Ms. XXXXX was determined to be ineligible for UI benefits as a result of appeal by the employer, which resulted in an overpayment of \$2,277.00. The Division of Unemployment Assistance correctly determined that the overpayment was due to an error and not the claimant's fault. Ms. XXXXX seeks a waiver for the full amount of \$2,277.00.

1. Ms. XXXXX is entitled to a waiver because it is against equity and good conscience to recover the payment because Ms. XXXXX would have been entitled to other benefits but for the error.

In determining whether recovering an overpayment would be against good conscience and equity, DUA is required to look at whether the receipt of UI resulted in the claimant relinquishing other rights or changed her position for the worse. Ms. XXXXX clearly meets this standard.

Ms. XXXXX is a single mother of 2 children who does not receive child support. If Ms. XXXXX had not received UI, she would have been eligible for supplemental payments of Transitional Aid to Families with Dependent Children (TAFDC) through the Department of Transitional Assistance. Her supplemental TAFDC grant would have been \$478.00 per month.

See 106 CMR 204.420, *Table of Payment Standards*.¹ Because DTA regulations do not provide any mechanism to pay TAFDC retroactively, if DUA were to recoup the overpayment for this period there is no possibility that Ms. XXXXX can recover the TAFDC payments she would otherwise have received

Moreover, Ms. XXXXX relinquished additional monetary rights by not applying for TAFDC during this period. Ms. XXXXX's food stamp allotment would have been significantly increased during this period if her source of income was TAFDC and child support. Her monthly rental obligation would have been significantly reduced².

For all of the above reasons, the recoupment of the overpayment would be against equity and good conscience and Ms. XXXXX's request for a waiver should be approved.

2. Ms. XXXXX is entitled to a waiver because it would defeat the purpose of benefits otherwise authorized if DUA recovered the overpayment.

Ms. XXXXX is eligible for a waiver under DUA's alternative consideration. In determining whether a claimant is entitled to a waiver under this test the inquiry is whether the claimant and her family are able to afford to pay back the waiver. Ms. XXXXX's financial information is included in the waiver form, but I want to take this opportunity to elaborate on her desperate financial situation.

Ms. XXXXX has been actively seeking full-time work but cannot secure any employment. Ms. XXXXX receives \$478 in TAFDC for her self and one child and her other child was recently approved for SSI due to severe disability and she will be receiving \$704 per month in Supplemental Security Income (SSI). Because her daughter's SSI was just approved the housing authority has not yet recalculated Ms. XXXXX' rent, but she will be getting a rent increase.³ She is currently behind on her auto insurance payments and utility bills. For all of the above reasons it is clear that Ms. XXXXX does not have the financial resources to pay back the overpayment.

Conclusion

Ms. XXXXX's request for a waiver of an overpayment should be approved as she clearly meets both tests that DUA employs in determining waivers. Thank you for your consideration of this request. If you have any questions please call me at xxx-xxx-xxxx.

¹ This calculation is based on the Table of payments for a family of 4 as well as the fact that the first \$50 of child support is non-countable income for TAFDC.

² There are a multitude of other benefits that Ms. Richardson may have relinquished by not having received TAFDC during these weeks. TAFDC eligibility provides automatic entitlement to related childcare benefits as well as education and training opportunities.

³ The general rule in subsidized housing is that the tenant pays 30% of income for her rent and in Ms. XXXXX's case she is also responsible for utilities separate from her rent.