



**DEPARTMENT OF UNEMPLOYMENT ASSISTANCE  
UI POLICY & PERFORMANCE  
INTEROFFICE MEMORANDUM**

**DATE:** August 13, 2015

**RESCISSION(s):** All earlier policy statements and memoranda relating to the subject-matter of this memorandum are rescinded, including, but not necessarily limited to:

- Memorandum dated March 31, 2011, from UI Policy & Performance, entitled "Revised Policy Related to Determinations of Fraud"; and
- Interoffice Memorandum dated June 21, 2013, from UI Policy & Performance, entitled "Issuing 'Fault' Determinations under G.L. c. 151A, § 69(a)"

**REFERENCE NO.:** UIPP 2015.06

**TO:** All DUA Managers, Career Center Field Operations Directors, Job Service Representatives, Compliance Officers, Review Examiners, Call Center Staff and Senior Staff Directors

**FROM:** Jennifer Lavin, Director, UI Policy & Performance

**SUBJECT:** Issuing At Fault Determinations Under G. L. c. 151A, § 69(a), and Fraud Determinations Under G. L. c. 151A, § 25(j).

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**1. PURPOSE.**

To provide guidance on how to properly determine:

- whether a claimant was at fault in connection with the receipt of erroneously paid unemployment benefits; whether the benefits were paid "because of such individual's failure knowingly to furnish accurate information concerning any material fact," G.L. c. 151A, §69(a); and
- whether a claimant fraudulently collected benefits while not in total or partial unemployment within the meaning of G.L. c. 151A, §25(j).

**2. REFERENCES.**

- G. L. c. 151A, § 25(j); § 62A(d)(iii); § 69(c)
- 430 CMR § 4.23
- 430 CMR § 6.03
- Service Representatives Handbook § 1462, as revised by a memorandum dated February 25, 2013, from UI Policy & Performance, entitled "Service Representative's Handbook § 1462 Revision"

### 3. RESCISSIONS.

All earlier policy statements and memoranda relating to the subject matter of this memorandum are rescinded, including, but not necessarily limited to:

- Memorandum dated March 31, 2011, from UI Policy and Performance, entitled “Revised Policy Related to Determinations of Fraud”; and
- Interoffice Memorandum dated June 21, 2013, from UI Policy and Performance, entitled “Issuing ‘Fault’ Determinations under G.L. c. 151A, § 69(a).”

### 4. ATTACHMENT.

Fault/Fraud Handout

### 5. BACKGROUND.

The Service Representative Handbook § 1462 explains, among other things, that:

- Section 69(a) imposes an interest charge on the unpaid balance of any overpayments of Unemployment Insurance benefits, if it is established that the overpayment resulted from an individual’s “failure knowingly to furnish accurate information concerning any material fact, including amounts of remuneration received.”
- Section 25(j) provides for the assessment of a compensable week disqualification of one week for each week in which the individual fraudulently collects benefits “while not in total or partial unemployment,” provided the “individual shall have had actual notice of the requirement to report earnings and the notice shall have met the requirements of” G.L. c. 151A, § 62A.
- “Fraud,” or fault, “encompasses a range of actions and failure to act that includes both intentional misrepresentation of the facts and the intentional concealment or non-disclosure of pertinent facts.”
- **It is critical that all adjudication staff clearly substantiate any determination resulting in a finding that UI benefits have been overpaid for a reason stated in Section 25(j) or Section 69(a).** Appropriately detailed fact finding must be conducted to determine the cause of the overpayment and the extent to which the overpayment resulted from (1) agency or claimant error or (2) the claimant’s failure to furnish accurate information that the claimant knew, or reasonably should have known, was pertinent to the determination on eligibility of benefits. If it is found that the claimant failed to furnish such information, then it must be determined to what extent the claimant may have knowingly misrepresented or withheld it.

## 6. ACTION.

In addition to the revision of § 1462 of the SRH, when making a 69(a) “fault” determination, adjudication staff must apply the standards contained in the definition of “fault” as outlined in 430 CMR 6.03 (instead of 430 CMR 4.23), which states:

In determining whether an individual is at fault, [DUA will] consider the nature and cause of the overpayment and the capacity of the particular claimant to recognize the error resulting in the overpayment. A claimant shall be at fault if the overpayment resulted from:

- (a) the individual furnishing information which he or she knew, or should have known, to be incorrect;
- (b) or failing to furnish information which he or she knew of should have known; or
- (c) acceptance of a payment which he or she knew, or could have been expected to know, was incorrect.

The determination of what an overpaid claimant “should have known” or “could have been expected to know” shall be *based upon the claimant’s own individual circumstances*, which takes into account the claimant’s capacity to recognize or take reasonable steps to avoid the error.

Adjudication staff also must comply with the fact-finding procedures, specified in the next section, to which the Department agreed in settling a lawsuit challenging the way it made determinations under G. L. c. 151A, § 25(j) and § 69(a).

## 7. FACT-FINDING.

- **A determination under G.L. c. 151, § 69(a)**, that an individual has failed “to pay when due any amount paid to said individual because of such individual’s failure knowingly to furnish accurate information concerning any material fact” (a § 69(a) finding) should be made when:
  - the facts found make it more probable than not that the individual knew, or reasonably should have known, that the individual provided inaccurate information, or withheld accurate information, concerning a material fact;
  - as a result, the individual erroneously received benefits; and
  - the individual did not repay the resulting overpayment when due.

Before making a § 69(a) finding, adjudication staff must:

- identify each such material fact;

- state the basis for the determination that there was a failure knowingly to furnish accurate information concerning each such material fact; and
- state the basis for concluding that the individual knew, or reasonably should have known, of the failure.

Before the Department issues a notice of determination and overpayment under § 69(a), a supervisor will review the proposed determination solely for compliance with these procedures. The supervisor may, but is not required, to review the correctness of the adjudicator's § 69(a) finding.

- **A determination under G. L. c. 151A, § 25(j)**, that an individual has "fraudulently collect[ed] benefits while not in total or partial unemployment" (a § 25(j) finding) should be made when:
  - the facts found make it more probable than not that the individual:
    - knew, or reasonably should have known, that the individual provided inaccurate information, or withheld accurate information, concerning a material fact regarding the fraudulent collection of benefits while not in total or partial unemployment; or
    - committed some other, specifically identified fraudulent act or acts; and
  - as a result, the individual erroneously received benefits while not in total or partial unemployment.

Before making a § 25(j) finding, the adjudicator must:

- identify the specific facts on which the § 25(j) finding is based; and
- state the basis for the determination that these facts establish the fraudulent collection of benefits while not in total or partial unemployment, and demonstrate that the claimant was not in total or partial unemployment and **would not have been entitled to any UI benefits as a result of the amount of unreported earnings.**

A determination under G. L. c. 151A, § 25(j) allows for the assignment of a compensable week penalty for every week the individual has "fraudulently collect[ed] benefits while not in total or partial unemployment." Before the Department issues an appropriate notice under § 25(j), a supervisor will review the proposed determination solely for compliance with these procedures and with G.L. c. 151A, §62A(d)(iii). The supervisor may, but is not required, to review the correctness of the adjudicator's § 25(j) finding.

- **When no claimant's statement is available**, and reasonable attempts to obtain a statement have been made and documented, a § 69(a) or § 25(j) finding still should be made if other available evidence shows that the claimant knew or should have known that he or she was:

- furnishing incorrect information
- failed to furnish material information, or
- accepted an incorrect UI benefit payment

The determination of what an overpaid claimant “should have known” or “could have been expected to know” shall be based upon the claimant’s own individual circumstances, which takes into account the claimant’s capacity to recognize or take reasonable steps to avoid the error. *There is no requirement that a claimant actually be spoken with or that claimant responses to fact-finding be received.* This is because a person’s knowledge, intent, or any other state of mind, may be inferred from all the facts and circumstances in the case.

7. **QUESTIONS.**

If you have any questions, please contact the UI Policy & Performance Department at (617) 626-6422.