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09-18-20	3:30 PM	09-17-20	P.L. 35-86	Department of Labor	35GL-20-2217

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

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Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

DEPARTMENT OF
LABOR
DIPÅTTAMENTON HOMOTNÅT • David M. Dell'Isola, Director • Gerard A. Toves, Deputy Director

Lourdes A. Leon Guerrero
Governor
Joshua F. Tenorio
Lieutenant Governor

September 17, 2020

The Honorable Tina Muna-Barnes, Speaker
Mina'trentai Singko na Liheslaturan Guahan
163 Chalan Santo Papa
Hagatna, Guam 96910

35GL-20-2217
Speaker Tina Rose Muña Barnes

SEP 18 2020
Time 3:30 ( )AM (X)PM
Received By: Glon

Subject: P.L. 35-86

Dear Madam Speaker Muna -Barnes,

Hafa Adai! The Department is hereby transmitting the Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), and Loss Wages Assistance (LWA) Programs Appeal Rules and Regulations, which have been uploaded onto our website. The information can be viewed at https://dol.guam.gov/pua-appeal/

Thanking you in advance for your continued support.

Very Respectfully,

David M. Dell'Isola
Director

Attachment: GDOL PUA/FPUC/LWA Appeal Rules & Regulations

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Website: dol.guam.gov • hireguam.com

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PUA, FPUC and/or LWA Appeal Regulations or Rules

APP §001 Title. These regulations are created pursuant to the federal CARES Act of 2020[1], Disaster Unemployment Assistance regulations of 20 CFR Part 625, and Hawaii state law and regulations (HRS §383-2 to §383-45 & HAR §12-5) and shall be entitled as the Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC) and Lost Wages Plan (LWA) Appeal Regulations or Rules (hereinafter "APP § ___" or "APP Section ___").

APP §002 Filing of PUA/FPUC Claim.

Claims for PUA/FPUC/LWA benefits (hereinafter referred in these regulations or rules as "claims") shall be made in accordance with such federal and or state law and regulations that may be required and selected for use by the Guam Department of Labor (hereinafter referred to in these regulations or rules as "GDOL" or "the department" or "the department of labor"). *See e.g.*, HRS§383-32.

APP §003 Determinations, in general.

(a)A determination upon an initial claim filed pursuant to APP §002 for eligibility shall be made promptly by a representative of the department of labor authorized to make determinations upon claims and shall include a statement as to whether and in what amount the individual is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, should state the reasons therefor and shall state that a negative outcome (whether denial, disqualification or notice of overpayment), is appealable. The department must promptly upon the, upon the filing of claim for a payment of PUA, FPUC and/or LWA benefits for a week of unemployment, determine whether the individual is entitled to payment of PUA/FPUC/LWA benefits for such week, and if entitled, the amount of PUA/FPUC/LWA to which the individual is entitled to and issue prompt payment.

[1] On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (P.L. 116-136).. Sections 2102 and 2014 of the CARES Act created the new temporary federal program called Pandemic Unemployment Assistance (PUA) and the emergency Federal Pandemic Unemployment Compensation (FPUC) program, respectively. Subsequently, the President issued an Executive Order or Memorandum in August 2020 authorizing the Lost Wage Plan (LWP) under the Other Needs Assistance for disasters with related federal funding and shared state funding to supplement in part the gap left by the expiration of the FPUC funding at the end of July 2020.

(b) If any applicant or claimant fails to furnish the information necessary to determine whether and in what amount the individual is entitled to benefits in the manner and within the time specified by the regulations of the department, the department shall make a determination based upon such information as is available. Any redetermination issued on the basis of information furnished by the applicant or claimant after the prescribed period shall be effective upon the date of the redetermination. *See e.g.*, HRS §383-33.

APP §004 Redetermination.

(a)In the absence of appeal and *before* mailing or delivery of notice of the original determination made pursuant to APP Section 3 to the parties entitled thereto, the department of labor may reconsider such determination or the claimant may request such a redetermination, the department shall promptly reconsider the determination.

(b) At any time within one year from the date of a determination with respect to benefits paid to a claimant, the department on its own motion may reconsider the determination if it finds that an error in computation or identity has occurred in connection therewith, or that income or wages of the claimant pertinent to the determination but not considered in connection therewith have been newly discovered, or that benefits have been allowed or denied or the amount of benefits fixed on the basis of a nondisclosure or misrepresentation of a material fact. If the amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in the increase may be filed in the manner and subject to the limitations provided in APP Section 008. If the amount of benefits is decreased upon such redetermination, the matters involved in the decrease shall be subject to review in connection with an appeal by the claimant from any determination upon a subsequent claim for benefits which may be affected in amount or duration by the redetermination. *See e.g.*, HRS §383-34(b).

(c) In any case in which the department is authorized by this section to reconsider any determination but the final decision in the case has been rendered by a referee or court, the department may petition the referee or court to issue a revised decision.

(d) At any time within *one year* from the end of any week with respect to which a determination allowing or denying waiting-week credit or benefit has been made, the department on its own motion may reconsider such determination if it finds that an overpayment, due to reasons other than fraud, has occurred. See e.g., HRS §383-34(c).

(e) In any case before the initial appeal hearing, the department may offer to conduct an informal meeting with the claimant to settle or resolve the matter and issue a redetermination that must occur at least five (days) before the initial appeal hearing, and may be incorporated into or consolidated with the pending appeal.

APP §005 Appeal pending when redetermination issued.

In the event that an appeal involving a determination or a prior redetermination is pending as of the date a redetermination thereof is issued, the appeal, unless withdrawn, shall be treated as an appeal from such redetermination. *See e.g.*, HRS §383-35.

APP §006 Notice of determinations.

Notice of a determination or redetermination upon a claim shall be promptly given to the claimant, by delivery thereof or by mailing the notice to the claimant's last known address. *See e.g.*, HRS §383-36.

APP §007 Appeal Tribunal and Appointment of Hearing Officer/Referee.

(a)Appeals from determinations and redeterminations including notices of overpayments with respect to PUA/FPUC/LWA unemployment benefits or compensation shall be heard by an impartial hearing officer/referee. *See e.g.*, HRS §383-37 and §383-98.

(b)The hearing officer/referee shall be appointed by the Department Director to serve as the appeal tribunal, and the Director may appoint substitute hearing officers/referees in the event of absence, disqualification, vacancy, or for any reason, the Director finds that the services of substitute hearing officers/referees are necessary for the prompt and expeditious handling of appeals. *See e.g.*, HRS §383-37 and §383-98; 22 G.C.A. §1106.

(c)The hearing officer/referee may administer oaths, hear testimony, take or cause to be taken the deposition of witnesses, and require, by subpoena, the attendance and testimony of witnesses, and the production of all books, documents, records and other evidence, and not be bound by the technical rules of evidence in the conduct of the hearing . *See e.g.*, HAR 12-5-93(e).

APP §008 Appeals, filing, and hearing.

(a)The claimant or any other party entitled to notice of a determination or redetermination as herein provided may file an appeal as indicated on the determination or redetermination letter or notice within ten days after the date of mailing of the notice to the claimant's or party's last known address, or if the notice is not mailed, within ten days after the date of delivery of the notice to the claimant or party. The department may for good cause extend the period within which an appeal may be filed to thirty days.

(b)Upon GDOL receiving the Disqualifying or Overpayment Notices in which the claimant indicated his or her intent to appeal, the Department's PUA/FPUC/LWA Appeals Office shall send to the claimant as soon as practical the NOTICE OF RECEIPT OF APPEAL letter or form.

(c)The Appeals Office hearing officer/referee shall promptly issue or send to both the claimant and the Department Director or his designee the NOTICE OF HEARING FOR APPEAL pleading form by first class, nonregistered, noncertified mail to the claimant's or party's last known address at least

fifteen (15) days prior to the initial hearing date and this Notice will indicate the date, time, and locations of the hearing, the issue(s) to be decided, and any other hearing procedure information. *See e.g.*, HAR 12-5-93(c).

(d)The appeal under subsections (a) through (c) shall be heard in Guam in which the redetermination, appeal and or reconsideration is filed, except that the department or Appeals Office may hold the appeals hearing via audio telephonic or video-teleconference or other electronic means or where necessary in order that a fair and impartial hearing may be had, as well as for public health and safety reasons, and may provide for the taking of depositions if good cause shown and the costs and expenses borne by the party requesting for deposition. Unless the appeal is withdrawn with the permission of the hearing officer/referee, the hearing officer/referee after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination or redetermination.

(e)The parties to any appeal shall be notified of the written decision of the hearing officer/referee and shall be furnished with a copy of the decision by first class, nonregistered, noncertified mail to the claimant's or party's last known address within five (5) days of the last hearing of the appeal unless there is good for delay of issuing the written appeal decision. The findings and conclusions in support thereof and the Appeals Office hearing officer/referee's decision shall be final and shall be binding upon each party unless a proceeding for judicial review is initiated by the party pursuant to APP Section 11; provided that within the time allowed for seeking judicial review and prior to the filing of a notice of appeal of, or petition for judicial review of the hearing officer/referee's decision, the department or claimant has 30 days to apply for a reopening or reconsideration of the decision, or upon the hearing officer/referee's own motion, and thereupon may take further evidence or may modify or reverse the hearing officer/referee's decision, findings, or conclusions. If the matter is reopened, the hearing officer/referee shall render a further decision in the matter either reaffirming or modifying or reversing the referee's original decision, and notice shall be given thereof in the manner hereinbefore provided. Upon reopening, the hearing officer/referee who heard the original appeal shall reconsider the matter, except where the hearing officer/referee is no longer employed as a hearing officer/referee or the hearing officer/referee disqualifies oneself from reconsidering the hearing officer/referee's decision.

(f)The claimant or Department Director or his designee also has thirty (30) days to seek judicial review of the Appeals hearing officer/referee's written decision after the last day on which reconsideration or redetermination can be ordered pursuant to Guam law.

(g)The time to initiate judicial review under APP Section 11 shall run from the notice of such further decision, if the matter has been reopened under subsection (g).

(h)If a claimant or party does not receive the written notice of determination or redetermination under subsection (a), a second written notice shall be sent by certified mail, and the hearing on the appeal shall be rescheduled accordingly.

(c)Notwithstanding any other provision of this chapter, the department, by agreement with another state or the United States as provided under section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of the Territory of Guam or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this State or of another state or under an unemployment program of the United States.

(d)In any case in which under this section an individual is liable to repay any amount to the department, the overpaid benefits amount shall be collectible without interest by civil action in the name of the Government of Guam or the Department of Labor by the Attorney General of Guam. *See e.g.*, HRS §383-44

APP §015 Governing provisions. The procedure with respect to the filing of claims and with respect to determination and redeterminations thereupon and with respect to appeals from such determinations and redeterminations and with respect to judicial review of decisions on such appeals shall be governed by sections APP §001 to APP §014, and any other provisions of these regulations or Chapter 9 of the Administrative Adjudication Law (5 G.C.A. §9100 to §9108) to the contrary notwithstanding. *See e.g.*, HRS §383-45.