ALABAMA DEPARTMENT OF WORKFORCE
ADMINISTRATIVE CODE

CHAPTER 480-4-4
INVESTIGATION AND COLLECTION

480-4-4-.07 Waiver Of Requirement To Repay Overpayments.

(1) An individual shall be required to repay an overpayment of unemployment compensation unless a written waiver application is filed with the department and approved by the Secretary or the Secretary's designee.

(2) The requirement for an individual to repay a final determination of overpayment may be waived by the Secretary, at his or her discretion using the criteria listed in paragraphs (2) through (13) of this Rule, when it has been determined that the payment of such benefits occurred without fault on the part of the individual, and collection of such overpayment would be contrary to equity and good conscience. The Secretary shall not waive overpayments due to back pay awards pursuant to Code of Ala. 1975, §25-4-78(6).

(3) In determining whether the individual was without fault, the following factors shall be considered:

(a) Whether an inaccurate statement or representation of a material nature was made by the individual in connection with the application for unemployment compensation that resulted in the overpayments, and whether the individual knew or should have known that the statement or representation was inaccurate.

(b) Whether the individual failed, or caused another to fail, to disclose a material fact in connection with an application for unemployment compensation that resulted in an overpayment, and whether the individual knew or should have known that the fact was material.

(c) Whether the individual knew, or should have been expected to know, that the individual was not entitled to the receipt of such benefit payments.

(d) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any other action, commission or omission, of the individual or of which the individual had knowledge, and which the individual knew to be erroneous, inaccurate, or otherwise incorrect.

(e) Whether the overpayment was the result of a decision on appeal, and whether the Secretary had given notice to the

individual that the case had been further appealed and the individual may be required to repay the overpayment in the event of the reversal of the appeals decision.

(f) Whether the Agency's decision resulting in the overpayment was incorrect, and whether the U.S. Department of Labor has issued guidance advising that waiver is appropriate in the circumstances leading to the establishment of the overpayment.

(4) In the event of an affirmative finding on any of the factors contained in (3)(a)-(d) of this rule, recovery of the overpayment shall not be waived, and further determination of any factors will not be necessary.

(5) When an overpayment results from payment of benefits based on exempt or non-covered wages erroneously reported by an employer, such overpayment may be waived by the Secretary without application of the foregoing criteria.

(6) The decision of the Secretary as to a waiver of overpayment is an appealable decision. However, the only issue to be considered on such an appeal is whether the Secretary abused his or her discretion in denying the waiver in accordance with the other provisions of this rule.

(7) This rule will apply equally to regular state unemployment compensation benefits, extended benefits, and any other special programs of benefits where there are no separate and distinct waiver provisions.

(8) A waiver of overpayment under the provisions of this rule that affects the account of a reimbursing employer will not result in a credit to their account unless such credit is specifically provided for by statute.

(9) The amount of any overpayment, repayment of which is waived in accordance with this rule, will not be restored to the individual's maximum benefit amount.

(10) Applications for waiver by an individual shall be in writing or electronically as provided by the Agency, and shall set forth the facts constituting grounds for waiver, including why the individual was without fault in the cause of the overpayment, and why repayment would be contrary to equity or good conscience, including supporting documentation.

(11) The Secretary may, acting upon his or her own motion, and without application by the individual, waive recovery of any overpayment upon discovery of information found to constitute grounds for waiver as set forth in this rule. When authorized by federal law and regulations, and when it would not create a federal conformity issue, the Department may approve blanket waivers for groups of similarly situated individuals.

(12) COVID-19 Pandemic Overpayment Provision

(a) Any waiver applications by individuals with eligible overpayments of CARES Act Programs that were denied prior to the effective date of this rule will be subject to a redetermination in light of this rule; provided, however, that only overpayment weeks ending February 2, 2020, through June 16, 2021, shall be eligible for redetermination.

(b) Benefits overpaid under any CARES Act Program, including those such determinations created by a reversal on appeal pursuant to §25-4-91(d)(l)a, may be waived pursuant to the provisions of this rule.

(13) The provisions of this rule shall apply to all overpayments existing on or after the effective date of this rule that were established on or after January 27, 2020.

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