

**Testimony for Public Oversight Hearing on the
Department of Employment Services**

**Committee on Business, Consumer & Regulatory Affairs
February 26, 2014**

**Drake Hagner, Staff Attorney
Legal Aid Society of the District of Columbia¹**

The Legal Aid Society of the District of Columbia submits this testimony to commend the Department of Employment Services (DOES) for improving program operations in several areas over the past year and to raise two areas of concern: (1) an opaque and unresponsive overpayment recovery process, and (2) language access issues.

The Office of Unemployment Compensation plays an important role in serving low-income residents who are more likely to be unemployed, including workers throughout our city who clean our offices, prepare our food, or provide home health care to those who are elderly or disabled.² Since 2011, Legal Aid has counseled or represented more than 150 low-wage workers in unemployment compensation matters, including initial claims and overpayment waivers before DOES and appeals at the Office of Administrative Hearings (OAH) and the D.C. Court of Appeals.³ Our testimony is based on these experiences.

I. Improvements by the Office of Unemployment Compensation

Legal Aid has witnessed improvements in DOES operations this past year and commends the agency's leadership and staff for these changes. Individuals such as Associate Director, Patrick Holmes – and before him, former DOES Chief of Staff (now Chief Operating Officer) Stephanie Reich – have been very responsive to Legal Aid's concerns about individual client matters, helping to resolve a number of cases.

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 80 plus years, tens of thousands of the District's neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the following priority areas: public benefits (including unemployment insurance), consumer, family law, housing, and appellate.

² While D.C.'s unemployment rate has declined overall to 8.1% as of December 2013, *see* Bureau of Labor Statistics, Local Area Unemployment Statistics (<http://www.bls.gov/lau/>), our lowest income wards continue to suffer disproportionately high rates of unemployment. In Wards 7 and 8, the unemployment rates are 14.4% and 21.6%, respectively. *See* DOES Office of Labor Market Research and Information (Dec. 2012) (<http://does.dc.gov>). By contrast, the more affluent Ward 3 has an unemployment rate of 2.2%. *Id.*

³ Legal Aid has also represented claimants before the D.C. Court of Appeals as part of the Barbara McDowell Appellate Advocacy Project since 2005. In 2009-2010, Legal Aid worked with other advocates to support amendments to the D.C. Unemployment Compensation Act, including important procedural protections in the appeals process and extending benefits to workers who lose their jobs for compelling family reasons, such as caring for ill or disabled family members.

Further, it is Legal Aid’s understanding that DOES has taken steps to better serve claimants with limited English proficiency by beginning to translate some documents and planning to offer interpretation services over the phone through Language Line. For example, the brochure titled “Claimants Rights and Responsibilities” is now available in Spanish on the DOES website. Legal Aid hopes that other languages, and other translated documents, will come soon.

Finally, after years of long delays, it appears processing time for initial unemployment claims have decreased some in the past year. People who are qualified for unemployment are therefore able to get crucial benefits sooner – and thus can avoid the devastating consequences of not being able to pay for rent, utilities, or groceries. Efficient claims processing is incredibly important to our low-income clients who do not have the resources necessary to support themselves in between jobs. Unemployment benefits prevent a free fall into poverty for individual workers and also protect local communities from economic decline, but only if benefits are received quickly.

Legal Aid welcomes the opportunity to meet with DOES to discuss further program improvements and our concerns on a more regular basis.

II. Concerns and Recommendations

Despite these improvements, Legal Aid remains concerned that: (a) DOES continues to lack transparency in how it assesses overpayments and processes waiver requests, and (b) DOES continues to operate in non-compliance with the D.C. Language Access Act.

a. Lack of Transparency in Overpayment and Waiver Request Processing.

Claimants who receive unemployment benefits are assessed overpayments when it is later determined they received too much in benefits. In these cases, the claimant can ask DOES to waive the debt. The DOES Benefit Payment Control Unit investigates possible overpayments, makes determinations, collects overpaid funds, and has the authority to waive overpayments.⁴ However, the waiver process is utterly lacking in transparency and accountability resulting in hardship for claimants who received additional benefits through no fault of their own.

While some overpayments involve dishonest or fraudulent conduct by claimants, the vast majority of individuals Legal Aid meets with have been overpaid through no fault of their own. For example, one Legal Aid client’s employer incorrectly reported her wages years before, resulting in a slightly inflated weekly benefit amount. This client had long exhausted her unemployment benefits and could not afford to repay the overpayment.

⁴ DOES waives overpayments at their discretion, except in circumstances where the overpayment is being recouped from future unemployment benefits. See DC Code 51-119(d)(1); DOES v. Smallwood, No. 09-AA-719 (DC August 18, 2011).

Unfortunately, the DOES Benefit Payment Control Unit often fails to send the proper notices that describe the reason for the overpayment and explains how to appeal the determination. Instead, a claimant may only a non-final Audit Notice and/or a quarterly statement requesting repayment. Several individuals Legal Aid has met with have gone to DOES for help understanding their overpayment paperwork, but they were not given information about how to appeal or request a waiver.

As a result, claimants are under-utilizing the waiver request process. According to DOES's responses to a FOIA request Legal Aid filed in March 2013:

- In FY 2011, DOES issued 6,613 Notices of Overpayment. Only 29 claimants submitted waiver requests, of which 19 were granted.
- In FY 2012: DOES issued 5,274 Notices of Overpayment. Only 14 claimants submitted waiver requests, of which 11 of those granted.

In other words, less than one-half of one percent of claimants asked for a waiver of their overpayment. It is hard to believe that this is an accurate number of claimants with potentially meritorious waiver arguments. Certainly, when a claimant is without fault in accruing the overpayment and cannot afford to pay back these benefits, recoupment is against equity and good conscience. *Cf.* DC Code § 51-119(d)(1).

Even when claimants submit a waiver request, they typically must wait many months for a response. In the meantime, DOES continues to collect the overpaid funds, for example, by intercepting D.C. income tax returns. One Legal Aid client received only one week of unemployment benefits before his receipt of benefits was reversed by DOES. He did not spend this weekly benefit amount but instead called DOES for instructions. He was told to return his unemployment debit card, which he did promptly. He followed-up with a phone call the next week and was assured that the debit card was received and the matter resolved. Months later, he received an overpayment statement requesting repayment. It took another four months of phone calls and emails by his Legal Aid attorney to resolve this matter with DOES.

Further, and perhaps more troubling, Legal Aid has been unable to determine what standards DOES applies when assessing waiver requests under DC Code § 51-119(d)(1). As a part of our FOIA request, Legal Aid sought staff manuals or instructions about unemployment overpayments, including instructions about whether to grant or deny an overpayment waiver request. In May 2013, DOES responded that it “could not locate any documents responsive to [our] request.”

These delays and errors – coupled with a lack of responsiveness from the Benefit Control Unit in response to waiver requests – are problematic and raise due process concerns for low-income claimants.

Recommendation:

- Publish existing guidelines for overpayment investigations to ensure meaningful opportunities for claimants to review and challenge alleged overpayments.
 - Develop and implement standards for evaluating waiver requests (including hardship and no fault standards). Commit to halting overpayment recoupment when a waiver request has been filed until a determination has been made to grant or deny the waiver request.
 - Increase staffing and/or supervision to ensure timely processing of waiver requests.
- b. DOES Services for Claimants with Limited or No-English Proficiency and Compliance with the Language Access Act.

Through Legal Aid’s experience having served dozens of unemployment claimants with limited or no English proficiency, including claimants who communicate in Spanish, French, Vietnamese, Amharic, and American Sign Language (ASL), we continue to have concerns that DOES is in non-compliance with the D.C. Language Access Act, although we recognize that DOES has improved its efforts in some regards.

The Act requires, for example, that D.C. agencies like DOES provide written translations of “vital documents” that inform claimants of their “rights” and “eligibility for benefits.” *See* DCMR 4-1226.1. Legal Aid is unaware of any claimant who has received a Claims Examiner Determination in one of the languages named by the Language Access Act. Nor have we seen any mailings for claimants that include notice of appeal rights of the expedited 15 calendar day deadline to file a hearing request.

DOES’s failure to provide these documents in a language that can be understood by the claimants can have real consequences. Legal Aid has handled several appeals on behalf of limited English proficient claimants who missed their deadline to file a hearing request because they did not understand the English-only notice or the steps needed to appeal.

Recommendation:

- At minimum, provide a multi-lingual insert into all Claims Examiner Determination mailings with a notice of appeal rights to OAH.
- Provide translation of vital documents into the languages covered by the Language Access Act, including Claims Examiner Determinations, Audit Notices, and Notices of Overpayment.
- Review customer service plans at each DOES office to ensure effective service for limited or no English proficiency clients in accordance with the Language Access Act.

Conclusion

Legal Aid thanks the Committee for the opportunity to submit this testimony and we look forward to working with DOES to continue resolving matters impacting claimants’ benefits.