
September 16, 2021

Senator Robert Cowles
Co-Chair, Joint Legislative Audit Committee
Room 118 South State Capitol
Madison, WI 53702

Representative Samantha Kerkman
Co-Chair, Joint Legislative Audit Committee
Room 315 North State Capitol
Madison, WI 53702

Dear Co-Chairs Cowles and Kerkman:

I am writing to update you on the status of the Department of Workforce Development's (DWD) efforts to implement the Legislative Audit Bureau's (LAB) recommendation regarding outstanding Unemployment Insurance (UI) appeals as contained in its review of the Fraud, Waste, and Mismanagement Hotline in July 2021 ([Report 21-11](#)).

Wisconsin, like all states, has been diligently working to manage and resolve the rapid and unprecedented increase in UI appeals received since the onset of the COVID-19 pandemic. Wisconsin's performance in this area is above the median compared to other states. Nevertheless, the rate in which claimants and employers have their appeals addressed in a timely manner is a priority issue for DWD.

For historical perspective, it took the UI Division over three years to return to federal timeliness standards following the Great Recession. It is also important to note that, historically, the rate of appeals from benefit determinations was 10 percent. In the several years prior to the pandemic, the rate of appeals was even lower, at 6-7 percent. In contrast, since the pandemic, the rate has been between 20-25 percent. The establishment of a brand-new federal unemployment program, Pandemic Unemployment Assistance (PUA), resulted in multiple, simultaneous appeals for many claimants. Delays in and changes to guidance by the U.S. Department of Labor (USDOL) for administering the program further contributed to the large number of appeals.

The increased rate of appeals, especially given the sheer number of claims filed and determinations issued since March 2020, was particularly challenging to navigate given the lower staffing levels in place preceding the pandemic. USDOL reimburses the UI program a set rate per benefit appeal based on a ranking of how "efficient" it is, meaning the cost per appeal processed in comparison with other states. As USDOL's overall funding was decreasing, the UI Division has worked diligently over the past eight years to improve its efficiency ranking to improve customer service and increase its reimbursement rate. However, during this time period, and in response to budget constraints and declining workload, the UI Division had not been filling Administrative Law Judge (ALJ) vacancies as they occurred.

Further, the UI Division had been consolidating support staff functions from other hearing offices into the Madison Hearing Office to increase efficiency, consistency, and quality in appeals processing. DWD had been working to improve efficiencies in processing appeals and working toward an electronic hearings process; however, until the appeals process is fully modernized, UI continues to rely on many paper-based processes, including mailing out hearing notices, telephone hearing packets, and decisions, and scanning documents for its appeals.

Because Wisconsin's UI laws are very complex, training ALJs for UI hearings customarily takes several months and may take up to a year for an attorney with no ALJ experience. Recognizing this fact, UI decided that the project staff and loaned staff onboarded throughout the pandemic would have the most immediate impact if they were trained to hold PUA hearings, while relying on permanent state ALJ staff already familiar with state laws to continue holding regular UI appeals hearings.

To assist with the pandemic-related appeals caseload, UI began the recruitment process to hire three permanent ALJs in April 2020. In May 2020, UI hired and trained a Limited Term Employee (LTE) who was a retired ALJ from another state agency and trained a current state attorney with prior ALJ experience who was temporarily reassigned to work on UI appeals. Both of these ALJs began holding hearings on limited issues and PUA cases in June 2020. The three permanent ALJs also started in June. Throughout 2020, as the appeal caseload grew, UI increased the number of appeals hearing hours scheduled each week per ALJ to the level last seen during the Great Recession. UI also ensured that cases are substituted on the calendar when other cases are withdrawn whenever there is adequate notice. As ALJs became more experienced holding hearings on PUA issues, UI also decreased the time scheduled for those cases so that more hearings could be scheduled each week.

As the federal government expanded and extended federal unemployment programs, DWD again looked for experienced state ALJs and those with prior UI experience to assist in holding hearings. In October, UI recruited a retired UI attorney to serve as an LTE to administratively review and dispose of late appeals. That same month, UI began recruiting project ALJs. The LTE and five of the project ALJs were able to start in December 2020. The remaining 28 started between January 19 and March 29, 2021. Three of the project ALJs resigned in April, May, and June, respectively. UI also requested additional interagency agreements with other agencies to loan attorneys to UI. This resulted in 1.5 attorneys from within DWD and 2.5 attorneys from outside DWD starting in January and February 2021. Two of those loaned attorneys resigned from state service in April.

DWD has continually monitored the number of appeals and has adapted to changing conditions. The department developed and implemented a plan to reduce its caseload and resume timeliness standards for both regular UI and PUA standards by the end of this summer. The pending workload of unscheduled cases needs to be about 8,000 or less to start consistently meeting federal timeliness. With the benefit of all the new ALJs hired and trained, since the latter part of spring 2021, the hearing office had been resolving an average of 346 more appeals than were being filed per week, reducing its overall caseload and reducing the time to hold hearings. By the week ending May 29, the pending workload of unscheduled appeals was 12,363. DWD was on target to reduce the pending workload of unscheduled appeals by an additional 1,730, down to 10,638, by the week ending July 3 with its May staffing levels.

Unfortunately, when the emergency rule waiving the four weekly work search action requirements was suddenly suspended nearly two months before the rule would have expired, there was an unanticipated surge in appeals. As I had testified before the Joint Committee on Administrative Rules Committee on May 19, 2021, Wisconsin is one of only seven states to require four or more work search actions. While the requirement seems relatively straightforward on its face, failing to meet the work search requirement is one of the leading reasons that claimants are denied benefits in Wisconsin and is the cause of more than 76 percent of all improper payments made in our state's program. Recognizing that the waiver was set to end in July, the Department had been in the process of training staff hired during the pandemic on these issue types and had begun educating claimants about the requirement. As I shared with the committee at the time, given the continued high volume of claims and appeals, we wanted to do all we could to mitigate the impact of these requirements on the amount of time it would take to properly resolve all claims and appeals.

Nevertheless, JCRAR did vote to end the waiver immediately. UI has received over 4,250 work search related appeals related to those denials between June 1 and September 7, about 300 per

week. As a result, in June, UI began receiving on average 250 more appeals weekly than being disposed. While the number of appeals on work search issues is gradually decreasing as claimants are becoming aware of their obligations to now comply with work search requirements that had been waived, UI has adjusted its plan to reduce the number of outstanding appeals and resolve the appeals in a timely manner. Our efforts are outlined below.

Recommendation: DWD report by September 16, 2021, to the Joint Legislative Audit Committee on its plan [to reduce the number of outstanding appeals] and on the status of appeals as of August 31, 2021, including the number of appeals awaiting a hearing, the average age of the outstanding appeals, and the average time from appeal determination to payment, if applicable.

As mentioned above, DWD has modified its plan and is further increasing its appeals staffing levels to address the increased volume of appeals filed since June 2021 and to continue improving timeliness of processing appeals. From May 30, 2021 to August 28, 2021, UI has received an average of 1,285 appeals per week. UI has disposed of an average of 1,194 appeals per week. Approximately 4,100 appeals related to the work search issue were received from June 1 through August 31, for an average of 315 appeals per week. More recently, in the month of August, UI received an average of 1,100 appeals per week and disposed of an average of 1,397.

ALJs are scheduled up to 40 hearings each week, depending on the complexity of the issue(s) noticed and the experience of ALJs. As of September 1, 2021, DWD had 56.5 ALJs working on UI appeals (up from 15.6 in March 2020): Specifically, 17 permanent ALJs, 3 Senior ALJs, 1 LTE ALJ, 29 project position ALJs, 3.5 temporarily reassigned ALJs, and 3 UI Attorneys temporarily acting as ALJs. The permanent ALJs primarily conduct hearings on eligibility issues for regular unemployment benefit appeals. Senior ALJs are responsible for the day-to-day management of the hearing offices, including training, supervising, monitoring, and evaluating the performance of all ALJs and hearing office support staff assigned to their offices. The training for the new ALJs is ongoing and they have frequent questions. Also, it is important to evaluate their performance and provide feedback to ensure a high quality of customer service and compliance with applicable law. While Senior ALJs do not have hearing scheduled on their calendars, they cover any hearings for ALJs when absent unexpectedly. This ensures that hearings are not postponed, which would cause the parties involved to wait longer for a rescheduled hearing. Senior ALJs as frequently effectively holding close to a full calendar of hearings when covering for absent ALJs.

The LTE ALJ disposes of late appeals administratively, when possible, and by soliciting withdraws of certain appeals where there may be no case or controversy. Initially, the project ALJs were holding appeal hearings for PUA eligibility. However, since June 1, after additional training, the project ALJs were transitioned to holding appeals on limited issues involving regular unemployment insurance eligibility. The temporarily reassigned ALJs continue to hold PUA appeal hearings and work search appeal hearings. As of the end of August, the PUA caseload was reduced to about 1,000 appeals.

As of August 31, there were 17,015 unresolved appeals. Of that total, 2,898 were scheduled for hearing, 2,012 were ready for scheduling, and 12,105 were in process (14,117 unscheduled). DWD has been able to make strides to improve the timeliness of appeals. According to the ETA-9055 report,¹ the average age of outstanding appeals at the end of May was 67 days and 55 days at the end of July. The preliminary report for August 2021, which includes draft data that is due to USDOL by September 20, 2021, shows that the average age of outstanding appeals at the end of August was 54

¹ Note, the ETA-9055 excludes federal extended programs. The [Weekly Snapshot of UI Division Activity](#) includes all appeals activity. By summing appeals scheduled and appeals pending scheduling, this would be the total appeals (Regular UI and special programs) that are awaiting a decision for the selected time period.

days. Unfortunately, the required federal reports do not track the average time from appeal tribunal decision to payment.

In addition to the already increased ALJ staffing levels, DWD's UI Bureau of Legal Affairs (BOLA) has hired four FTE ALJ permanent positions from the existing project ALJ pool and an additional 20 FTE ALJ project positions to address the increased workload experienced this summer. Upon hiring, BOLA estimates that it will take two to three weeks to train inexperienced project ALJs on hearing processes and procedures, and an additional week to train on holding work search/work registration hearings. The expectation is that the new project ALJs should be holding full hearing calendars by the fifth week after starting training.

DWD has worked to expand recruitment efforts by searching for ALJs statewide (rather than just Madison, for example) and to allow ALJs to work full time. Nonetheless, BOLA has been unable to recruit for the 20 project positions as recruitment efforts to date have demonstrated that the market for new attorneys is very competitive. Whereas in the past, BOLA had ample qualified candidates respond to job postings, this recruitment has shown that hiring of project positions may need to occur on an ongoing basis and with increased recruitment efforts. Once BOLA can hire all 20 projects positions, and all 20 complete training, it is estimated that DWD will be able to dispose of 800 work registration/work search appeals each week. With those additional hearings, BOLA should be scheduling about 1,900-2,000 hearings each week for all ALJs. Assuming the weekly appeals received average remains about 1,300, the total caseload would be reduced by about 600-700 appeals each week to further improve DWD's efforts to once again begin meeting DOL timeliness standards in early 2022.²

We hope you find this information helpful. DWD remains steadfast in efforts to process appeals as quickly and effectively as possible and is a key priority for the agency at this time.

Thank you for your consideration.

Sincerely,



Amy Pechacek
Secretary-designee

² DOL timeliness measures are:

- Acceptable Level of Performance for Lower Authority Appeals time lapse is:
 - 60 percent of completed cases within 30 days, and
 - 80 percent of completed cases within 45 days.
- Acceptable Level of Performance for Lower Authority Appeals case aging is:
 - 30 days – meaning cases should not be pending for more than 30 days.