

Court rules against Michigan workers falsely accused of unemployment fraud

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A three-judge panel in the Michigan Appeals Court dismissed a class-action lawsuit filed on behalf of Michigan workers falsely accused of civil fraud in the notorious Michigan Unemployment Insurance Agency (UIA) “robo-fraud” scandal. In the July 18 decision the court did not directly address the now undisputed fact that most of the millions of dollars the state collected in restitution, fines and fees was not even owed by those accused of fraud.

The court based its ruling on a technicality, asserting that a six-month legal time limit to dispute claims against the state government was not met. They asserted the clock started when the UIA determined it had fulfilled its duty to notify claimants that they had been accused of fraud.

All three lead plaintiffs in the class action suit argued they were actually within the parameters of the legal time limit to file a claim because they filed within six months after actual damages occurred, that is after their income was taken when aggressive actions by the state garnished their wages or seized their tax returns on behalf of the UIA.

Because the state’s collections started months and even years after flawed notifications were made to the class represented in the suit, plaintiffs did not even know and had no reason to believe they owed money at all, much less that they had allegedly made false statements in the online benefit application process. In fact, as later investigation by state officials would reveal, it is possible the vast majority of the fifty-odd thousand affected by the class action suit do not owe and perhaps never owed dime to the UIA.

In late 2016 a state-run audit was partially completed and it was clear the state was stonewalling. With several lawsuits pending, the state was forced to admit a staggering 93 percent error rate in 31,000 of the UIA

cases where fraud determinations were made solely as the result of a \$42 million dollar computer program installed by the state.

Another tranche of 28,000 cases had some human input after the computer program initially flagged them. Even in the latter tranche now being re-reviewed, that is where computer/human fraud determinations were made, a 44 percent rate of error has been detected.

The state has the highest fraud penalties in the US. Workers face 12 percent interest and penalties of 400 percent of money they claimed. There were actually cases where fines accumulated into the thousands even though claimants never actually received a dime!

One of the plaintiff’s accounts of injury is cited in the court’s ultimately unfavorable ruling. It presents one picture of the extent of malice workers experienced after filing for benefits.

In their decision, the judges cited details of the claim for relief by Teddy Broe, one of the three lead plaintiffs. It said: “...Broe did not receive any of these notices because they were sent only to his [online account], an online account he no longer accessed because he was re-employed and not claiming any UIA benefits. In 2015, Broe received a notice from UIA that he owned [sic] a debt of approximately \$8,800.00 representing overpayment, interest and penalties for fraud. Broe filed a protest with the UIA, however his protests were denied as untimely. Then, in May 2015, UIA intercepted Broe’s state and federal income tax refunds.”

Nevertheless, Judges Michael Gadola, Patrick Meter and Karen Fort Hood sided with the UIA and lawyers from Michigan Attorney General Bill Schuette’s office and overturned a favorable lower court ruling made over a year ago that had allowed the class action suit to go forward.

Royal Oak Attorney Jennifer Lord, who first filed the suit in September, 2015, blasted the decision and vowed to appeal. She told the *Detroit Free Press* that the ruling was “incredible,” and “based on circular logic” and pointed to the Flint water crisis as another case where related issues involving government agencies are at play.

The scope of the seizures made by the state from individuals caught up in the UIA dragnet is breathtaking. This is demonstrated in the case of Karl Williams, another one of the other lead plaintiffs cited in the court’s decision.

The state has still not determined whether he ever really owed them anything, but by 2015 he had his tax return seized in partial restitution to the UIA. By then the original and possibly false determination of less than \$10,000 in benefits paid, an amount Karl Williams believed he was owed, had grown to the point where the state was demanding over \$64,000 in restitution, fines and fees!

Indeed, what makes the ruling even more egregious is that it was the flawed notification process that played a major role in the UIA fiasco. In an attempt to collect the maximum from workers cases were flagged as far back as 2007 right through the surge in layoffs following the 2008 financial crisis. Fines and fees compounded for unsuspecting workers who had gone back to work.

Even if a claimant somehow knew they had been charged with fraud it would be difficult if not impossible to stop the collections steamroller. One oversight report showed that during some months in 2014, that is at the height of the false-fraud accusations, the UIA was taking only ten percent of claimant calls for help. Even as the false claims of fraud against unemployed workers mounted, UIA employees were being eliminated due to budget cuts at the state level.

The Michigan UIA had been under fire for years for the false fraud allegations even prior to the class action suit filed late 2015. Individual appeals were so backed up the state was forced to hire more Administrative Law Judges (ALJs) to hear cases. Some of these ALJ’s felt pressure from their superiors in the state’s Department of Licensing and Regulatory Affairs to tone down their criticism of faulty cases where workers were clearly in the right.

The head of LARA at the time was Wanda Stokes,

now in charge of the state’s Talent Investment Agency. She took over after Sharon Moffett-Massey, former UIA head, was transferred. Stokes was in her new position at UIA when a previous federal lawsuit against the state by the UAW and others was settled out of court with no admission of wrongdoing by the agency.

Stokes said a review of about 50,000 fraud determinations made between 2013 and 2015 is nearly completed and so far the state has returned more than \$16 million. But the state’s Unemployment Contingency Fund, which is largely funded by fees and fines collected from UIA fraud collections, has ballooned from \$3.1 million in 2011 to \$160 million by the end of 2016.

Despite empty claims by Stokes that the agency has reformed, attorney Lord filed another class action suit in May on behalf of a Ford worker and others. Jason Doss continued to see a quarter of his paycheck seized by the state, even though a judge in January ordered a halt to all related collections by state officials related to the “robo-fraud” case. This more recent class action suit demands that no money be taken from the UIA Contingency fund until all claims are paid. Lord has estimated the amount actually owed to workers could be in the hundreds of millions.

The state has already lost one major class action suit in its use of zealous enforcement of computer adjudicated social benefits. A similar computer-matching fiasco was used to unjustly deny SNAP food assistance benefits to unemployed and low income residents. In May the Michigan DHHS was ordered to make \$3,120 lump sum payments to 18,700 people unjustly cut off food assistance benefits.



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