

Sec. 31-273-4. Waiver

(a) The Administrator shall determine that repayment or recoupment of any benefits found to be overpaid pursuant to Section 31-273-2 of the Regulations of Connecticut State Agencies would defeat the purpose of the benefits or would be against equity and good conscience and shall be waived only if the individual did not receive such benefits by reason of fraud, wilful misrepresentation or wilful nondisclosure by the individual or through the agency of another of a material fact, and one of the following conditions exists:

(1) it has been established by evidence or statements, that the individual's prospects for securing full-time employment are severely limited as a result of physical or mental disability, poor health or any other circumstances which would be detrimental to the individual's employability; or

(2) the benefits were overpaid to the individual as a result of retrospective application of a legislative change; or

(3) the benefits were overpaid as a direct result of gross administrative error; or

(4) the benefits were overpaid as the result of a decision by an Appeals Referee, the Employment Security Board of Review or any court of law reversing a prior decision, and adequate notice was not given to the individual that the individual would be required to repay benefits in the event of any reversal upon appeal; or

(5) it has been established by evidence or statements, that the individual substantially, detrimentally and irreversibly changed such individual's position in reliance upon the receipt of unemployment compensation by foregoing receipt of any public welfare benefits for which the individual would have been entitled but for the receipt of such unemployment compensation; or

(6) the individual—

(A) has been overpaid benefits in an amount equal to or greater than two times the individual's weekly benefit amount at the time the overpayment was made; and

(B) the individual's annualized family income, as determined under subsection (c) of this section, does not exceed one hundred and fifty percent of the poverty level, most recently published in the Federal Register by the United States Department of Commerce, Census Bureau, which corresponds to the size of the individual's family unit; or

(7) the individual is deceased; or

(8) the benefits were overpaid as a direct result of an employer's failure to respond timely or adequately to a request of the Administrator for information relating to the individual's claim for unemployment compensation benefits in a manner prescribed by the Administrator.

(b) For the purposes of this section, "gross administrative error" may be found only where it is clear that a reasonable examiner, adjudicator or trier of fact in the same circumstances and presented with the same facts would not have made the same determination or taken the same action, or the Employment Security Division has failed to discharge its responsibilities so as to deprive the individual of substantial due process of law. Reversal or modification of any determination upon appeal shall not, by itself, constitute grounds for finding gross administrative error.

Gross administrative error by the Administrator may be found only where the individual was not aware and reasonably would not have been aware of such error, so that reliance

could not justifiably have been placed upon a determination resulting from such error.

Gross administrative error by the Employment Security Appeals Division may be found only upon a specific finding by the Employment Security Board of Review that an individual was overpaid benefits as a direct result of a decision by the Appeals Division which constitutes gross administrative error within the meaning of this subsection. The Employment Security Board of Review may determine whether an overpayment directly resulted from gross administrative error by the Appeals Division either:

- (1) upon appeal of the Referee's decision by any party to the Board of Review; or
- (2) upon direct certification of the question of gross administrative error to the Board of Review by the Administrator, or an Appeals Referee in any subsequent proceeding.

(c) In order to determine an individual's "annualized family income" pursuant to subparagraph (B) of subdivision (6) of subsection (a) of this section, the Administrator shall:

(1) determine the total gross income of the individual and the individual's spouse, including cash contributions of any other family member to the individual's household, during the six months prior to the fact-finding held under Section 31-273-2 of the Regulations of Connecticut State Agencies to determine whether the individual's overpayment should be waived, excluding any unemployment compensation which has been determined to be overpaid; and

(2) multiply such total income by two; and

(3) deduct any extraordinary medical expenses for which the individual is responsible but which are not covered by a health insurance plan.

(d) In order to determine whether an overpayment of benefits shall be waived pursuant to subdivision (6) of subsection (a) of this section, the Administrator may require the individual to present any financial records, pay stubs, federal income tax returns, or other data deemed necessary for such determination. The Administrator may require the individual to provide such individual's spouse's social security number for the purpose of verifying the spouse's income.

(e) The Administrator shall publish annually tables which set forth income levels equal to one hundred and fifty percent of the poverty level, most recently published by the United States Department of Commerce, Census Bureau, in relation to family size. Such tables shall be utilized in making all determinations pursuant to subdivision (6) of subsection (a) of this section. Copies of such tables may be obtained by any individual, upon request, at any office of the Connecticut Labor Department, Employment Security Division.

(Effective March 29, 1988; Amended May 12, 2013; Amended November 5, 2020)