

# Strengthening UI in Maryland

**Policy and Practice Changes to Expect  
Following the Settlement of *Gorres, et al. v.  
Robinson***

**THE PUBLIC JUSTICE CENTER**

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# SETTLEMENT OVERVIEW

1. Period of Settlement: December 7, 2022 – June 7, 2024 (18 months)

2. Elements of Settlement

- A. Timely Processing of Claims
- B. Eligibility Determination Process
- C. Overpayment Process
- D. Overpayment Waivers
- E. BEACON Accessibility & Alternatives
- F. Customer Service
- G. Notice: Form & Delivery
- H. Identity Verification/Fraud

3. Monitoring

# Elements of Settlement

# Timely Processing of Initial Claims

- 92% of initial claims processed w/in 21 days of filing by payment of benefits or delivery of appealable denial of benefits - *i.e.* written decision explaining why individual is ineligible, which can be appealed
- 97% of claims requiring adjudication (*i.e.* a 2-party hearing to resolve a factual dispute) processed w/in 8 weeks of filing by payment of benefits or delivery of appealable denial of benefits
- When is a claim considered “filed”?
  - When application and documents are filed on BEACON or by telephone + mail
  - No delay in filing date because of technical errors, including uploading document in wrong format (e.g., scan vs PDF), image does not show all four corners of original document, wrong document color, etc.
- What if an initial claim is not processed within the above timelines?
  - UI Ombudsman takes steps to ensure lagging claims are resolved as quickly as possible
  - Contact: [ui.ombudsman@maryland.gov](mailto:ui.ombudsman@maryland.gov) or dial Call Center and they will submit inquiry to the UI Ombudsman

# Timely Processing of Continued Claims

- All continued claims are entitled to a presumption of continued eligibility
- If MDOL suspends continued claim to investigate an issue, it must within 14 days:
  - Resume payment on the claim OR
  - Deliver an appealable denial of benefits
- MDOL is updating BEACON to ensure that resumption of payment is automatic after 14 days, if no delivery of an appealable denial

## Determination/Redetermination Process: Fact-Finding (COMAR 09.32.02.16(E) PLUS)

- Fact-finding interview: no significant fact dispute re: eligibility
  - Reasonable opportunity to reschedule if claimant or claimant's representative is unavailable
  - All reasonable attempts to contact – phone, email, mail, BEACON
  - Independently verify information from computer database
  - Gather all information needed to support determination
  - Provide claimant opportunity to rebut information
- Fact-finding 2-party hearing: Significant fact dispute
  - Notice of date, time, place, type of proceeding; rights to be represented, examine and rebut evidence, cross examine witnesses
  - Reasonable opportunity to reschedule
  - At least two calls at date/time of telephonic hearing

# Eligibility Determination/Redetermination Process: Appeals

- All of the following determinations are appealable to Lower Appeals Division → Board of Appeals, incl. with “appeal” button on BEACON
  - Monetary Determinations
  - Non-Monetary Determinations
  - Redeterminations
  - Overpayment Determinations
  - Denials of Overpayment Waivers
- Additional Informal Dispute Resolution for Monetary Determinations
  - Initial notice will direct UI claimant to contact MDOL to initiate informal dispute resolution BUT, after doing so, claimant may terminate informal process at any time and ask for an immediately appealable determination, which MDOL will issue

# OP Determinations: COMAR 09.32.12 (new)

- Pre-Determination Fact-Finding: No Dispute of Material Fact
  - Reasonable efforts to promptly contact claimant who may have OP
  - Independently verify information from computer database
  - Gather all information needed to support determination
  - Provide claimant opportunity to rebut information
- Pre-Determination Fact-Finding: Dispute of Material Fact
  - Notice of date, time, place, type of proceeding, right to be represented, right to examine and rebut evidence, and cross examine witnesses
- Notice of OP Determination:
  - Must be delivered by first class mail in addition to “preferred method”
  - Shall not reference fraud unless there has been a finding of fraud
  - Shall explain appeal and waiver rights
  - Timely OP appeal (w/in 30 days) allows appeal of underlying issues



# OP Waivers: COMAR 09.32.07 & more

- MDOL shall apply blanket OP waivers for fed. benefits for determinations issued on/after 1/1/20 – incl. refunds:
  - PUA or PEUC issued w/o adjudication of “able/available” issue
  - Claimant was eligible for PUA or PEUC but WBA too high
  - MDOL paid PUA despite failing to certify that they were not working for COVID related reasons
  - MDOL incorrectly paid PUA instead of PEUC, and PUA amt was higher
  - MDOL incorrectly processed earnings for MEUC
- Notice of denial of overpayment waiver request delivered by first class mail in addition to “preferred method”
- Denial of overpayment waiver request is appealable in 30 days
- No collection when appeal or waiver request is pending, or time to request has not expired
- May appeal OP determination and request waiver at the same time – neither prejudices the other

## BEACON Accessibility & Alternatives

- MDOL shall not delete any notices, correspondence, payment history, or other content from BEACON portals for 7 years
- BEACON Mobile app will alert users to limitations – including functions that can only be performed on desktop version
- MDOL will ensure claimants have and are advised of the option to apply for benefits and perform claims processing functions by telephone
  - Posting of information about option for telephonic filing and claims management on website and in offices
  - Recording of information about telephonic filing and claims management on Call Center telephone line

# Customer Service

- Call Center Staff and anyone responsible for responding to claimant phone/email/chat inquiries have access to all key information about claims:
  - Whether there has been a determination/redetermination
  - All payment history
  - All correspondence and action alerts
  - All notices
- ...And the authority and ability to take necessary actions:
  - Filing and correcting errors on initial applications
  - Filing weekly certifications
  - Forwarding delayed claims to UI Ombudsman
  - Reopening claims
  - Password changes

## Form of Notice

- Standardized forms for several types of determinations, notices of fact finding, denials of overpayment waiver requests incorporated into agreement
- Standard notices:
  - Explain legal and factual basis for decision
  - Explain how to appeal – including the informal dispute process, and option to terminate that process and appeal, in context of monetary determinations
  - Do not reference fraud where there has not been a finding of fraud

# Delivery of Notice

- Preferred Method of Communication
  - Mail, email, or text
  - Claimant selects upon filing and can change any time
  - When selecting email or text notice, claimant will be advised that (a) they will not receive the content of notices in emails/texts, just an alert to check BEACON, (b) they will not receive copies of notices by mail, and (c) they can change method any time via BEACON or phone
  - Email and text notifications will be titled “Important Notice Affecting Your Benefits Rights” and will provide a number to call if claimant cannot find the notice on BEACON
- Overpayment determinations and denials of overpayment waivers will always be sent by mail in addition to any other selected preferred communication method

## Identity Verification & Fraud

- All of the above processes and timelines apply even if there is a “flag” or suspicion of fraud – i.e., cannot indefinitely lock claimants out of BEACON because of fraud flag
- Where there is a suspicion of fraud, MDOL must go through the same determination/redetermination process above and issue an appealable determination
- MDOL cannot deny claims solely because an automated process has flagged the claim for fraud
- Claimants will have the option to verify their identity through electronic OR non-electronic means – e.g., submitting documents by mail or in person

# Monitoring

# Red Flags: What may indicate a pattern/practice of non-compliance?

- **Timeliness Failures**
  - Failures to pay or deliver appealable denials on initial claims within 21 days of application for more than 8% of cases (no adjudication)
  - Initial claims pending for more than 8 weeks w/o payment or appealable denial
  - Repeated suspension of continued claims for more than 14 days without pay or appealable denial – e.g., is BEACON not automatically restarting benefits after 14 days if no denial?
  - Locking claimants out of BEACON for a fraud “flag” for more than 14 days on a continued claim
- **Determination Process Failures**
  - Fact-finding interviews and two-party hearings are not scheduled in advance, with reasonable opportunity to reschedule
  - MDOL fails to make two phone call attempts before concluding that claimant failed to appear at a telephonic hearing



# Red Flags: What may indicate a pattern/practice of non-compliance?

- Notice Failures
  - Failures to use notice templates incorporated into settlement
  - References in notices to possible fraud where there has been no finding of fraud
  - Failures to deliver in accordance with preferred communication method – plus US mail in the case of OP determinations and waiver request denials
  - Failure to permit claimants to easily change their preferred communication method

# Red Flags: What may indicate a pattern/practice of non-compliance?

- Appeal Failures
  - Not being able to appeal monetary determinations, after requesting to terminate informal dispute resolution process
  - Absence of “appeal” button accompanying determinations on BEACON
- OP Determination Failures
  - Failures to conduct pre-determination investigation, including input from claimant, before issuing determination
  - Claimant timely appeals OP determination but isn’t permitted to appeal underlying eligibility determination resulting in OP (and/or OP notice doesn’t expressly advise claimant of this right)
  - Permitting claimants to pursue either an appeal or a waiver request for an OP – but not both simultaneously
  - Collection on OPs, including through offsetting benefits, while appeal or waiver request is pending or before the time to pursue has expired

# Red Flags: What may indicate a pattern/practice of non-compliance?

- OP Waiver Failures
  - Failure to apply blanket waivers on federal benefits OPs
  - Failure to refund benefits reduced/collected to offset an OP issued on federal benefits since Jan. 1, 2020, if claimant is eligible for a blanket waiver
  - Failure to permit appeal of OP waiver denials
- BEACON Failures
  - Prolonged or repeated BEACON crashes, esp. if no prompt alternative means of claims processing
  - Omission of prominent disclaimer on BEACON Mobile App about limited functionality of App
  - Notices, correspondence, payment history, or any other content being deleted from/not appearing in BEACON

# Red Flags: What may indicate a pattern/practice of non-compliance?

- Miscellaneous Failures
  - Initial claims are not processed or denied because of technical errors – e.g., 4 corners of document are not visible in photo or scan, or claimant used wrong file format
  - Claimants are unable to apply for benefits or certify claims via telephone – or telephonic process is significantly delayed.
  - Claimants do not have option to verify identity both electronically (e.g., by submitting documents through BEACON or by email) and non-electronically (e.g., by mail)
  - Customer service is consistently unresponsive or unable to answer questions about claims

## Contact information

If you are experiencing a problem with unemployment insurance in Maryland that might fall within the scope of the Gorres v. Robinson settlement, complete the Google form at [www.publicjustice.org/unemployment](http://www.publicjustice.org/unemployment)

We will be in touch about next steps.