**Section 2835.72 Waiver of Recovery of Overpayments Under Lost Wages Assistance (LWA) Program**

a) The Department will waive recovery of any overpayment under the Lost Wages Assistance (LWA) Program paid to a recipient if the Department determines that:

1) The overpayment was without fault on the part of the recipient; and

2) Recovery would be contrary to equity and good conscience.

b) For purposes of subsection (a), recovery of the overpayment will be considered to be against equity and good conscience if:

1) It would cause financial hardship to the person from whom it is sought;

2) Regardless of the recipient's financial circumstances, the recipient can show that, based on the overpayment or notice that a benefit payment would be made, the recipient has:

A) relinquished a valuable right; or

B) changed positions for the worse; or

3) Recovery would be unconscionable under the circumstances.

c) For purposes of this Section, pursuant to guidance provided by the Federal Emergency Management Agency (FEMA) which oversees the LWA program, if the Department has previously recovered LWA overpayment funds from a recipient and that recipient is granted a waiver pursuant to this Section, then LWA funds shall not be used to refund that recipient those recovered monies. Additionally, there is no language authorizing the payment of such refunds in the enabling laws of unemployment insurance programs, including, but not limited to, the Illinois Unemployment Insurance Act [820 ILCS 405] and the CARES Act [P.L. 116-136].

d) When determining requests for a waiver of recovery of an overpayment of LWA benefits paid in conjunction with benefits paid under PUA, PEUC, or the first week of benefits funded by the federal government under any State or federal unemployment program:

1) If a claimant requests a waiver of recovery of an overpayment under PUA, PEUC, or the first week of federally-funded benefits under any State or federal unemployment program (see Section 2835.70), it will also be considered to be a request to waive recovery of an LWA overpayment if the overpayment occurred while the LWA program supplemented the claimant's weekly benefit amount and the payment under LWA has also been determined to be an overpayment. The Department’s determination or decision regarding the request for a waiver will list the findings for allowing or denying waiver of recovery of multiple overpayments separately according to the program under which the benefits were paid. The Department’s determination or decision will include the reason for the determination or decision, and when waiver is allowed, the time period of the waiver, and the amount waived.

2) EXAMPLE: A claimant files a request and provides supporting information for a waiver of recovery of a PUA overpayment covering the period from the week beginning August 16, 2020 through the week ending September 12, 2020. In this case, the LWA program provided a $300 supplement to the claimant's weekly benefit amount for the weeks between August 16, 2020 and September 5, 2020, and the LWA supplements have been determined to be an overpayment. The adjudicator determines that the claimant's request meets the criteria for a waiver of recovery of both PUA and LWA overpayments, and states in the determination:

A) the reasons for the waivers;

B) that a waiver of recovery of the PUA overpayment is granted for the period from the week beginning August 16, 2020 through the week ending September 12, 2020;

C) that a waiver of recovery of the LWA overpayment is granted for the period from the week beginning August 16, 2020 through the week ending September 5, 2020; and

D) the amount waived for each program.

3) The standard for allowing the request for waiver of recovery of the overpayment attributable to payments under PUA, PEUC, or the first week of benefits funded by the federal government under any State or federal unemployment program is set forth in Section 2835.70.

4) The standard for allowing the request for waiver of recovery of the overpayment attributable to payments under LWA is set forth in this Section.

5) The provisions of Section 2835.70(g) relating to an adjudicator’s determination on a claimant’s request for a waiver of recovery of an overpayment under PUA, FPUC, PEUC, MEUC, or the first week of benefits funded by the federal government under any State or federal unemployment program also apply to a request for waiver of recovery of an overpayment of LWA benefits made in conjunction with benefits paid under one or more of those programs.

6) The provisions of Section 2835.70(h) relating to the reconsideration and appeal of an adjudicator’s determination on a claimant’s request for a waiver of recovery of an overpayment under PUA, FPUC, PEUC, MEUC, or the first week of benefits funded by the federal government under any State or federal unemployment program also apply to a request for waiver of recovery of an overpayment of LWA benefits made in conjunction with benefits paid under one or more of those programs.

e) When determining requests for a waiver of recovery of an overpayment of LWA benefits paid in conjunction with the payment of non-federally funded regular or extended unemployment insurance benefits:

1) If a claimant requests a waiver of recovery of an overpayment of non-federally funded regular or extended unemployment benefits (see Section 2835.67), it will also be considered to be a request to waive recovery of an LWA overpayment if the overpayment occurred while the LWA program supplemented the claimant's weekly benefit amount and the payment under LWA has also been determined to be an overpayment. The Department’s determination or decision regarding the request for a waiver will list the findings for allowing or denying waiver of recovery of multiple overpayments separately according to the program under which the benefits were paid. The Department’s determination or decision will include the reason for the determination or decision, and when waiver is allowed, the time period of the waiver, and the amount waived.

2) EXAMPLE: A claimant files a request and provides supporting information for a waiver of recovery of a regular unemployment insurance overpayment covering the period from the week beginning August 16, 2020 through the week ending September 12, 2020. In this case, the LWA program provided a $300 supplement to the claimant's weekly benefit amount for the weeks between August 16, 2020 and September 5, 2020, and the LWA supplements have been determined to be an overpayment. The adjudicator determines that the claimant's request meets the criteria for a waiver of recovery of both overpayments, and states in the determination:

A) the reasons for the waivers;

B) that a waiver of recovery of the regular unemployment insurance overpayment is granted for the period from the week beginning August 16, 2020 through the week ending September 12, 2020;

C) that a waiver of recovery of the LWA overpayment is granted for the period from the week beginning August 16, 2020 through the week ending September 5, 2020; and

D) the amount waived for each program.

3) The standard for allowing the request for waiver of recovery of the overpayment attributable to payments of non-federally funded regular or extended unemployment insurance benefits is set forth in Section 2835.67.

4) The standard for allowing the request for waiver of recovery of the overpayment attributable to payments under LWA is set forth in this Section.

5) The provisions of Section 2835.67(h) relating to an adjudicator’s determination on a claimant’s request for a waiver of recovery of an overpayment of non-federally funded regular or extended unemployment insurance benefits also apply to a request for waiver of recovery of an overpayment of LWA benefits made in conjunction with benefits paid under one or more of those programs.

6) The provisions of Section 2835.67(i) relating to the reconsideration and appeal of an adjudicator’s determination on a claimant’s request for a waiver of recovery of an overpayment of non-federally funded regular or extended unemployment insurance benefits also apply to a request for waiver of recovery of an overpayment of LWA benefits made in conjunction with benefits paid under one or more of those programs.

(Source: Added at 46 Ill. Reg. 14206, effective July 29, 2022)