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KEVIN D. WALSH
Acting State Comptroller

November 18, 2020

Mr. Robert Asaro-Angelo, Commissioner
Department of Labor and Workforce Development
1 John Fitch Plaza
P.O. Box 110
Trenton, New Jersey 08625

Re: Follow-Up Report – Improper Temporary Disability Insurance Benefit Payments to Deceased Individuals

Dear Commissioner Asaro-Angelo:

On November 13, 2014, we issued an audit report, *Improper Temporary Disability Insurance Benefit Payments to Deceased Individuals*, in which we made recommendations to address the Temporary Disability Insurance program's various identified weaknesses. Pursuant to *N.J.S.A. 52:15C-1 et seq.*, we have conducted a review of the Department of Labor and Workforce Development's corrective action plan to assess the implementation of the recommendations contained in our initial audit. Our findings and conclusions are set forth below.

Background, Scope, and Objective

The Temporary Disability Insurance (TDI) program provides cash benefits to individuals who cannot work because of sickness or injury not caused by their job. The Department of Labor and Workforce Development (LWD) administers the TDI program. Our 2014 audit identified TDI payments totaling \$168,764 improperly issued by LWD to 160 deceased individuals.

Our follow-up review objective was to determine if LWD implemented the two recommendations contained in our initial audit report.

Summary Conclusion

Our review found that LWD did not fully implement our initial audit recommendations. Of the two recommendations, LWD did not implement one and only partially implemented the other.

We urge LWD to continue its efforts to fully comply with both recommendations.

Status of Initial Audit Recommendations

Recommendation 1

LWD should, as deemed appropriate, pursue recovery of the improper TDI payments identified in this report.

Status: Not Implemented

Our initial audit identified TDI benefits totaling \$168,764 improperly paid to 160 deceased individuals. LWD stated in its official response to the audit report, as well as in its corrective action plan, that it would pursue recovery of the improper payments.

As part of our follow-up review, we inquired about any recovery efforts taken by LWD. LWD representatives advised us that LWD did not take any action. They explained that former LWD officials had waived the improper payments in accordance with *N.J.S.A. 43:21-55.1* and had not sought recovery.

*N.J.S.A. 43:21-55.1*¹ provides that a person is liable for an overpayment by LWD, except in certain circumstances. An overpayment is required to be either deducted from future payments or to be collected through the judicial debt collection process. LWD must give notice to the individual within four years of the overpayment. LWD is permitted to waive overpayments. In order for it to do so, the overpayment must have been made because of an error by the division, employer, or physician, and the individual must not have knowingly misrepresented or withheld material facts to obtain the benefits. When those conditions are satisfied and the individual on whose behalf an overpayment was made is deceased or permanently disabled, “all repayments of overpayments shall be waived.” *N.J.S.A. 43:21-55.1(b)(2)*. LWD waived all overpayments for the 160 individuals without evaluating whether the other conditions were satisfied. LWD was required by *N.J.S.A. 43:21-55.1(b)* to evaluate more than just whether the individual was deceased. LWD failed to do so and thus did not implement our recommendation.

Our review of LWD’s implementation of our recommendation was complicated by the fact that LWD did not comply with the Department of the Treasury, Division of Revenue and Enterprise Services’ record retention policies and procedures for the TDI payments identified in our initial audit. Of the 160 improper payments, LWD officials advised us that the files for 87 payments had been purged from LWD’s current database and were not readily available for review without an extensive system change. LWD further advised that there was no assurance that it would be able to retrieve the files. LWD did not provide the criteria it applied to the 87 files to include them in

¹This statute was amended in 2019. L. 2019, c. 37. LWD’s obligations under the amended statute with regard to overpayments to deceased or permanently disabled persons were not changed.

its purge of information.

In addition, we found that LWD did not use the correct record retention schedule. LWD provided a Record and Retention Disposition Schedule that was not authorized by or in compliance with the rules of the Division of Revenue and Enterprise Services.

We recommend that LWD implement formal written policies and procedures for the recovery of improper TDI payments, including for payments to deceased individuals. These policies and procedures should include appropriate procedures that (i) ensure LWD's compliance with statutory provisions for granting waivers; (ii) require LWD to document the justification for its actions and decisions; and (iii) ensure LWD complies with state record retention policies.

Recommendation 2

LWD should continue its efforts to strengthen controls to identify deceased individuals prior to disbursement of benefits.

Status: Partially Implemented

Our initial audit found that LWD lacked adequate controls to identify deceased individuals prior to the disbursement of benefits. LWD stated in its official response that it had strengthened controls to identify deceased individuals prior to distributing benefits.

During our review, LWD advised us that, on a daily basis, it compares the social security numbers of TDI recipients to those of deceased individuals obtained from a third-party vendor. LWD informed us that since it implemented this cross-match process, it identified 36 individuals who had received TDI benefits after their date of death. LWD reported that, as a result of its cross-match process, it recovered payments of \$41,839 between September 2014 and June 2016.

Our review concluded that LWD's cross-match process addressed the issue of identifying deceased individuals, but LWD did not have adequate controls in place to document sufficiently individuals identified in the cross-match process who had received payment after the date of death. We also found that LWD did not have accurate and complete records related to efforts to recover the overpayments. In reviewing the supporting documentation for the overpayments LWD asserted it had recovered, we found that LWD provided supporting documentation for only 28 cases with a total amount recovered of \$33,008. Our review of the supporting documentation confirmed 27 cases with recovered funds of \$28,246. LWD incorrectly included nine cases involving recovered funds of \$13,593.

LWD's approach did not permit us to evaluate whether this new control was effective. It was not possible to evaluate the control without accurate and complete information regarding the cross-match identification of deceased recipients, a summary of payments made to those deceased individuals, and the status of recovery efforts, if any. LWD's failure to provide complete and

accurate data, coupled with its disregard of record retention procedures (see recommendation number one), and its lack of any process to recover improperly issued funds, indicates that LWD must take further steps to respond appropriately to our original recommendation.

We recommend that LWD improve its cross-match procedures to better identify and prevent improper payments and improve its reporting of any such cases for possible recoupment.

Reporting Requirements

We provided a draft copy of this report to LWD for its review and comment. LWD's response was considered in preparing our final report and is attached as Appendix A.


LWD's response indicated that it has acted in response to recommendation number two, but LWD did not address the finding or any planned corrective action for recommendation number one related to the implementation of formal written policies and procedures for the recovery of improper TDI payments. OSC urges LWD to take action as recommended earlier in this report.

By statute, we are required to monitor the implementation of our recommendations. To meet this requirement, LWD officials must report periodically to our office advising what additional steps they have taken to address the unresolved issues in this report. LWD is required to report on the status of its corrective action plan within nine months of this final report. We will continue to monitor LWD's progress.

We thank the management and staff of LWD for the courtesies and cooperation extended to our auditors during this review.

Sincerely,

KEVIN D. WALSH
ACTING STATE COMPTROLLER

By: 
Yvonne Tierney, Director
Audit Division

c: Julie Diaz, Chief of Staff
Paul Yuen, Deputy Commissioner
Anna McMullen, CFO, Finance and Accounting
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State of New Jersey

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DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
P.O. BOX 110, TRENTON, NEW JERSEY 08625-0110

ROBERT ASARO-ANGELO
Commissioner

October 21, 2020

Kevin D. Walsh, Acting State Comptroller
Office of the State Comptroller
P.O. BOX 024
Trenton, New Jersey 08625-0024

Dear Mr. Walsh:

We are in receipt of your letter dated September 24, 2020, regarding the discussion draft of the follow-up review of the Improper Temporary Disability Insurance Benefit Payments to Deceased Individuals. Below is the New Jersey Department of Labor and Workforce Development's (DOL) response to the two recommendations provided:

Recommendation 1

DOL should, as deemed appropriate, pursue recovery of the improper TDI payments identified in this report.

DOL Response: The initial OSC audit identified the improper benefits, referred to in the recommendation, totaling \$168,764 paid to 160 deceased individuals. Of those 160 claims, we were able to identify 70 as Non Fraud claims, 3 as Possible Fraud claims and determined that the remaining 87 claims had been purged from our system, Disability Automated Benefits System (DABS). DOL has previously communicated to OSC, throughout this OSC follow-up work, that we are unable to retrieve those 87 purged claims without extensive system programming. The system is 35 years old. Our Division of Information Technology believes such programming would most likely cause irreparable damage to DABS current state. That in turn would negatively impact or possibly destroy claims data for tens of thousands of other TDI claims.

Recommendation 2

DOL should continue its efforts to strengthen controls to identify deceased individuals prior to disbursement of benefits.

DOL Response: DOL will review all of the current policies and procedures which we use to identify deceased claimants. We will implement further controls to ensure we are not paying improper benefits to deceased individuals.



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ROBERT ASARO-ANGELO
COMMISSIONER

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Additionally, we will review the Department of Treasury, Division of Revenue and Enterprise Services', record retention policy and implement any new policies and procedures which will ensure our compliance with that policy.

If you have any question please contact Theresa Vallely, Director of Internal Audit, at Theresa.Vallely@dol.nj.gov.

Sincerely,



Robert Asaro-Angelo
Commissioner

c: Julie Diaz
Paul Yuen
Anna McMullen
Ron Marino
Theresa Vallely
Kathleen Bencivengo
Jeff Flatley