

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
Case No. 21-CV-03838

KELLY MURPHY,)
ROSANNE SIMANAVAGE,)
JENNIFER TURCO,)
JOSHUA WEBB,)
and Others Similarly Situated,)
Plaintiffs,)
)
v.)
)
MICHAEL HARRINGTON, in his)
official capacity as Commissioner of the)
Vermont Department of Labor,)
VERMONT DEPARTMENT OF LABOR,)
Defendants.)

STIPULATED TEMPORARY ORDER

This Interim Agreement (“Agreement”) is made between Vermont Legal Aid, Inc., (“VLA”), and the State of Vermont Department of Labor (“VT DOL”).

On December 1, 2021, VLA filed suit in Washington Superior Court, Civil Division, Docket No. 21-cv-03838, seeking class status for all persons who received an adverse determination on their unemployment benefits claim, filed a timely First Level Appeal as provided in 21 V.S.A. § 1348, did not have their First Level Appeal heard within 30 days, and are still awaiting a hearing and final decision (“Class Plaintiffs”) and on behalf of the Class Plaintiffs seek an injunction in the form of a court order requiring VT DOL to hear First Level Appeals within 30 days from the date the appeal is filed.

On December 20, 2021, VT DOL filed its opposition to the motions for both class status and for a preliminary injunction. On December 30, 2021, VLA filed its reply memoranda in further support of its motions for class status and for a preliminary injunction. The motions, being fully briefed, remain pending before the Washington Superior Court and the Parties have agreed to attempt to resolve the issues before seeking a hearing on the pending motions.

In consideration of the mutual promises and agreements contained herein, the sufficiency and adequacy of which is acknowledged by both Parties, it is agreed:

I. Information Sharing

Beginning February 7, 2022, and continuing for each week through the end of June 2022, VT DOL shall provide to VLA a report (the “Report”) containing the following data from the

preceding week: (1) the number of new appeals docketed by the VT DOL; (2) the number of hearing notices mailed out; (3) the total number of appeals heard, number of appeals where appellant did not attend, and number of appeals continued at the request of a party; (4) the total number of decisions issued; and (5) the total number of appeals where a hearing has been held but a decision is still pending completion. This Report shall be provided weekly, by Wednesday following the reporting week. Each such Report shall include the number of all individuals then presently meeting the criteria above, regardless of whether they have been identified in a prior Report.

The Report shall also provide the following data on the current status of appeals that have been pending for more than 30 days since being filed: (1) the total number of appeals pending a decision; (2) the number of these appeals that have not yet been scheduled for a hearing; (3) the number of these appeals that have been scheduled for a hearing; and (4) the number of these appeals that have had a hearing but are waiting on a final decision.

VT DOL may also, at its discretion, provide information related to the data contained in the Report to provide context and explain what changes in internal processes or programming are reducing the number of claimant First Level Appeals waiting longer than 30 days or that are causing additional delays with hearing claimant First Level Appeals and steps being taken to address those issues.

II. Performance Standards

VT DOL agrees to use its best efforts to meet the performance standards below.

As of the week ending February 4, 2022, VT DOL reports that there are currently 288 claimant First Level Appeals that were filed more than 30 days prior and have not been heard. Of these, 223 have been scheduled for a hearing and 65 are still waiting to be scheduled.

VT DOL reports that for the four months prior to this Agreement, VT DOL has issued an average of 51 decisions per week.

- a. VT DOL shall use its best efforts to increase the number of claimant appeals heard to at least 63 per week by March 1, 2022.
- b. VT DOL shall use its best efforts to increase the number of claimant appeals heard to at least 75 per week by April 1, 2022.
- c. VT DOL expects that by May 1, 2022, it will return to scheduling claimant First Level Appeals to occur within thirty days from the date the appeal is filed.
- d. VT DOL shall use its best efforts to meet the US DOL guidelines of having at least 60% of all claimant First Level Appeals decided within 30 days and 80% of all First Level Appeals decided within 45 days by June 1, 2022.

III. Implementation and Monitoring

In its efforts to address the unprecedented number of unemployment claims resulting from the pandemic, administer numerous new state and federal benefits programs, and provide claimant First Level Appeals, VT DOL has undertaken the following steps:

Hiring of Additional Administrative Law Judges

Prior to March 2020, VT DOL had three full-time Administrative Law Judges (ALJs) who heard and decided claimant First Level Appeals. Currently, the VT DOL has eleven full-time ALJs and one part-time ALJ who are handling First Level Appeals.

Handling of Pandemic Unemployment Assistance Claims

As part of the Federal Government's response to the economic disruption caused by the pandemic, several benefits programs were created that supplemented or replaced regular unemployment insurance. In the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the United States Congress passed legislation to provide benefits to those not traditionally eligible for unemployment insurance benefits known as Pandemic Unemployment Assistance (PUA).

The PUA program required VT DOL to invest significant resources into new computer technology to administer the claims and train its ALJs on the program requirements. Over the course of 2021, the VT DOL handled 1,768 First Level Appeals separate and apart from the administration of 1,938 regular unemployment insurance First Level Appeals. The PUA program ended in September 2021 and as the number of appeals related to PUA benefits has diminished, the VT DOL is able to devote these resources towards regular unemployment insurance appeals.

Handling of One-Party Appeals

VT DOL has taken steps to expedite the scheduling of First Level Appeals for cases that involve only one-party by assigning those cases to an ALJ who exclusively handles that class of appeals.

Increases in the Number of Decisions Issued by VT DOL

Due to the recent hiring of additional ALJs and the cessation of the PUA program, over the past four months VT DOL has increased the number of regular employment insurance decisions for First Level Appeals a monthly basis to an average of 205 decisions a month. This is an increase of over 45% from the average of 140 decisions a month between January and August 2021.

In addition to the steps VT DOL has already taken as outlined above,

- VT DOL will be sharing information with VLA about its progress with scheduling and deciding First Level Appeals as described above the in the weekly report.
- The Parties will each provide public information/notice on their respective websites about this Agreement.

- VT DOL will designate and authorize an individual to provide information to VLA advocates about the status of pending claims/appeals with respect to claimants who are represented or assisted by VLA who need information on the status of their unemployment claim.
- VLA may request a meeting on a weekly basis to discuss the progress of the VT DOL with respect to meeting the performance standards and to discuss additional proposals to resolve the backlog of claimant appeals that have been waiting more than 30 days for a hearing. Such a request must be made in writing at least 72 hours before the day the requested meeting is to occur and provide specific notice of the proposals that VLA would like to discuss implementing.

IV. Dispute Resolution

If any Party believes Defendants will be unable to substantially comply with the deadlines in the Performance Standards agreed upon herein, or either Party believes the other Party is not complying with this Agreement, the Parties agree to meet to discuss a resolution. If, after 21 days of engaging in good faith dialogue, the Parties are not able to reach an agreement on how to resolve these issues, either Party may request a hearing or status conference from the Court on the disputed matters, and/or the pending motions for class status and a preliminary injunction.

V. Entire Agreement

This Agreement contains the entire agreement between the Parties with regard to the matters set forth in it.

VI. No Private Right of Action

Nothing in this Agreement shall create a right of action for individual claimants or recipients of Unemployment Insurance benefits against the VT DOL.

VII. Litigation Suspended

It is the Parties' intention that this Agreement will temporarily suspend litigation in Docket No. 21-cv-03838. Accordingly, the Parties hereby agree to stay further proceedings and all outstanding deadlines and litigation not provided in this Agreement until July 1, 2022. No later than June 15, 2022, the Parties shall either jointly or separately file a status report with the Court and advise whether this matter may thereafter be closed and dismissed, or if not, what other actions are required. Recognizing that this case was brought as a class action, any dismissal or final settlement must be approved by the Court under Vermont Rule of Civil Procedure 23.

If prior to June 15, 2022, VT DOL has returned to the scheduling of all claimant First Level Appeals to be heard within 30 days of the date the appeal was filed for three consecutive weeks, and is issuing decisions within three weeks of the date of the appeal hearing, the Parties agree to file a joint stipulation of dismissal of this case with the Court.

VIII. Continuing Jurisdiction

The Washington Superior Court, Civil Division, shall have continuing jurisdiction over this matter while the stay is in place.

IX. Miscellaneous

This Agreement shall be construed and interpreted as if all language were prepared jointly by the Parties, and no language in the Agreement shall be construed against a Party on the ground that such Party drafted or proposed that language.

This Agreement may not be amended or modified except by written instrument executed by all of the Parties. Alleged representations not set forth in this Agreement, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

DATED this 11th of February 2022

/s/ Kelli Kazmarski

Kelli Kazmarski, Staff Attorney
Vermont Legal Aid
Counsel for Plaintiffs

DATED this 11th of February 2022

/s/ Bartholomew J. Gengler

Counsel for Defendants

The Court hereby finds, based on the representations of the Parties, that the Parties have negotiated this Agreement in good faith, that implementation of this Agreement will avoid prolonged and complicated litigation between the Parties, and that this Agreement is fair, reasonable, and in the interest of the Parties.

SO ORDERED this 14th day of February, 2022



Hon. Judge Mello