Testimony Provided to the House Oversight and Ethics Committee in Support of
HB 4982, Legislation Addressing the MI Unemployment Agency's
Grossly Unfair and Inefficient "Robo-Fraud" System
February 18, 2016

Chairman McBroom, members of Oversight and Ethics Committee, thank you for accepting my testimony in regards to House Bill 4982. I also want to thank Rep. Victory for introducing this bill to address some of the problems inherent in the Unemployment Insurance Agency (UIA's) 'robo-fraud' system. I am a clinical law professor at the University of Michigan Law, and my practice focuses on representing claimants as they navigate the unemployment insurance process. These comments are mine alone and not those of the University of Michigan. I am a strong supporter of this bill, but I have a few suggested amendments which I believe could strengthen the bill and I hope to work on those amendments with Representative Victory. My goal today is to provide you with some insights on how fraud – and specifically robo-fraud – works in the unemployment insurance system based on my experiences.

Historically, a claimant or employer was considered to have committed fraud when he or she made an "intentional misrepresentation" to the Unemployment Insurance Agency ("UIA"). If the UIA makes a finding of fraud, claimants are required to pay back the benefits they received with interest, as well as a 400% penalty, which is far and away the highest penalty of any state in the U.S. (the next-highest state penalty is 150%). In addition to these steep financial penalties, claimants are statutorily denied a hardship waiver for fraud-related debts and bankruptcy proceedings rarely discharge this debt.

Beginning in 2013, the UIA implemented a computer system that was pitched to them by Fast Enterprises as having the potential to dramatically increase the agency's efficiency while reducing the incidence of claimant fraud. It is worth noting that, to my knowledge, no effort was made to establish a system that would also work to reduce the incidence of employer fraud. This computer system, called MiDAS, was designed to automatically process fraud claims, going back over three years of data. While the decision to switch to an automated system was good in theory, in practice it has become clear that the MiDAS system's flaws greatly outweigh its benefits. For example, the MiDAS system automatically determines that a claimant has committed fraud if he or she: (1)) does not respond to the agency's fraud questionnaire within ten days; (2) provides a timely response that is inconsistent with the employer's response; or (3) provides a timely and consistent response that the computer system fails to properly record.

This system is problematic and inefficient for several reasons. First, the MiDAS system operates under the presumption that claimants have committed fraud, which deviates from the traditional presumption of innocence. This is all the more troubling given that, in my experience, claimants facing such charges have almost always done nothing wrong. Given the financial constraints of unemployment, or just the need to seek employment in a different area of the state, claimants often are forced to move. This means that when MiDAS flags a fraud well after a particular claimant has stopped collecting benefits, as is often the case, there is a high likelihood that the resulting fraud questionnaires will be sent to outdated addresses, leaving claimants with no reasonable way to respond within the required 10 day timeline. Even when the questionnaires are received, they fail to provide clarity as to what "fraud" the claimant is being accused of, and how to respond. Claimants often lack the expertise to make a legal conclusion about the nature of their unemployment within the terminology of the Michigan Employment Security Act. Thus, when the MiDAS system automatically issues a fraud determination, claimants are unduly punished for their lack of legal expertise and/or having a different address than the Agency has on record – long after the time that they were receiving benefits and therefore required to notify the agency of address changes.

Further, the MiDAS system often automatically issues multiple determinations for a single claim causing further confusion. As mentioned above, despite this mass of paperwork, the notices often fail to explain the discrepancy that caused the finding of fraud, forcing claimants to respond without an understanding of the evidence against them. Instead of giving claimants the opportunity to be heard by a real person that can mitigate the confusion, the MiDAS determination immediately applies the steep penalties. As a result, claimant's wages and tax returns are garnished while they try to understand what is happening, what rights they have under the appeals process, and await a hearing.

In sum, the MiDAS system is making 'criminals' out of innocent claimants by (1) assuming that every discrepancy between the claimant's report and the employer's report is not simply a difference of opinion to be sorted out in an administrative hearings process, but an intentional act of fraud, and one committed only by claimants; (2) automatically making a finding of fraud against claimants before they have the opportunity to provide evidence in their defense, (3) not providing claimants with adequate information to even know what they are accused of and how to respond. In addition to the very real harm being caused to otherwise innocent individuals, the MiDAS program results in government waste as claimants must regularly use the lengthy appeals process to establish their innocence, when human review in the first instance could avoid the issue altogether.

For these reasons, I urge you to vote "yes" on HB 4982. In consultation with other attorneys, I have provided the sponsor with amendments that I think would strengthen this bill, specifically by providing further protection for innocent claimants, and by promoting fairness and government efficiency.

Submitted on behalf of Michigan Poverty Law Program

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