

MAINE STATE LEGISLATURE

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April 4, 1963

Roy U. Sinclair, Chairman

Milton L. Bradford, Assistant Attorney Gen'l.

Legal Opinion re SUB

Reference is to your memo of April 1, 1963, in which you request an opinion in regard to two questions, reading as follows:

- "1. Does Section 16, X, of the Law apply relative to the paying of benefits to those claimants who filed for unemployment compensation having received SUB payments?
- "2. Can payments be made to those claimants for the period dating back one year from March 18, 1963?"

It is my opinion that Section 16, X has no bearing on this situation, as I do not feel there is any question of error in computation or identity involved within the meaning of said Section.

Section 16 of the Maine Employment Security Law (Chapter 29, R.S. 1954, as amended) contains provisions relative to handling of claims for benefits.

Subsection I provides that claims shall be made in accordance with Commission regulations. It is assumed the SUB claimants did so.

Subsection II provides: (The small letters in parenthesis are not quotes from the statute.)

- (a) "II. Determination. A representative designated by the commission, and hereinafter in this chapter referred to as a deputy, shall promptly examine the 1st claim filed by a claimant in each benefit year and shall determine the weekly benefit amount and maximum benefit amount potentially payable to the claimant during such benefit year in accordance with the provisions of subsection V of section 14.
- (b) "The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts found by him, shall determine whether or not such claim is valid... or shall refer... to an appeal tribunal or to the commission, which shall make a determination with respect thereto...

* * *

- (c) "The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons therefor. Unless the claimant...within 7 calendar days after such notification was mailed...files an appeal from such determination, such determination shall be final... provided, however, if new evidence or pertinent facts that would alter such determination become known to the deputy prior to the date such determination becomes final, a redetermination is authorized, but such redetermination must be mailed before the original determination becomes final."

* * *

Subsections III, IV, V, VI, VII, VIII, IX provisions are not material to the issue under consideration.

Subsection X provides in such part as seems material:

"X. Determination may be reconsidered; appeal. The commission may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if it finds that an error in computation or identity has occurred in connection therewith, or that wages have been erroneously reported, but no such redetermination shall be made after one year from the date of the original determination....

"The commission may reconsider a benefit payment for any particular week or weeks whenever it finds that an error in computation or identity has occurred in connection therewith or that earnings were erroneously reported, but no such redetermination may be made after one year from the date of payment for such week or weeks...."

The assumptions in the following paragraph are based on my understanding of recognized commission procedures in regard to excess earnings claims and partial benefit payments.

It is assumed the determination required by (a) and (b) above were made. It is further assumed that while the SUB claimants may have been made aware or were aware that the reason for no payment or a partial payment was because SUB payments were considered wages, no formal notification thereof was mailed as provided by (c) above. If the latter is true, there is no mailing date from which the period of time can start to run to make the determinations final.

Roy U. Sinclair, Chairman

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April 4, 1963

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That being so, it would appear that it is still open to these claimants to protest; have a written decision made, and mailed, and appeal therefrom within seven days of the mailing if they desire.

Furthermore, and for the same reason, and it appears to me to be the logical course to follow, it would seem that the deputy could now make a redetermination based on the Supreme Judicial Court's decision in the Malloch case. (See (c) above.)

It being my opinion that Section 16, X has no bearing here, my answer to question 2 is that if my assumptions as to procedure are correct, payments could be made, not only dating back one year from March 18, 1963, but earlier.

MLB:e

cc - Mr. Cote
Mr. George