

WORKLOAD NARRATIVE

FIELD OPERATIONS

November 2014

Workload: In November, intake for all cases [17,201] fell for the seventh straight month. The number of new cases was only two-thirds of the average size for 2014 and represented the fewest new appeals since **February 2001**. With the holidays and lower intake, dispositions [18,498] fell by more than 6,000 from the total in October and represented the smallest output since July 2006. Nevertheless, this was the sixth time in seven months in which the number of dispositions exceeded the number of verifications. The open balance [30,632] is the smallest it has been in one year.

UI. In November, the number of new UI cases [16,062 cases; 9,734 appellants] was the smallest since **February 2005** and 34% below the average for 2014. The number of closed cases [17,228 cases; 10,440 appellants] was 30% below the norm for the year, but exceeded intake for the sixth time in seven months. The open balance [20,404 cases; 12,365 appellants] is 17% below the average for 2014 and at its lowest level since **June 2006**. The inventory of open extension appeals, however, continued to fall and represented 8% of the total UI intake and output.

DI. In November, intake [815] was the smallest since February 2013 and 24% below the average for 2014. Dispositions [965] were 5% below this year's norm but exceeded intake for the fourth straight month. As a result, the open inventory [1,834] is at a seven month low and is once again below the average for 2014.

Tax, Rulings, Other. November was the fifth straight month in which the number of new tax cases [253] exceeded the number of dispositions [145]. The open inventory [3,633] rose to a 23 month high, although it is only 6% larger than this year's average. The ruling inventory [4,715] fell for the third consecutive month and is at a seven month low.

Case Aging and Time Lapse. For November, 30-day time lapse was at 63.0% and met its goal; 45-day time lapse was at 79.2%, just shy of the 80% goal. Average case age was at 31.5 days. The time lapse percentages for extension cases were mixed with 19% of the cases being resolved in 30 days and 45% within 45 days.

Cycle Time. The UI time lapse cycle time in November [41 days] was one day longer than October's performance and the same as September's. The time to process extension appeals [57 days] improved for the third straight month while for disability appeals [76 days] rose back to the time in September.

ALL PROGRAM TRENDS - FO

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	40,411	36,315	41,141	38,210	38,185	37,903	34,470	40,374	41,888	38,682	32,388	33,369	453,336	37,778		
2012	35,262	32,109	38,944	35,539	36,576	34,012	33,820	39,560	35,059	38,330	32,377	27,469	419,057	34,921	92%	-2,857
2013	35,188	32,990	35,462	34,280	35,060	30,208	31,649	31,789	26,509	29,993	24,703	26,488	374,319	31,193	89%	-3,728
2014	30,651	25,592	27,945	32,463	28,565	26,278	26,130	23,655	23,363	22,861	17,201		284,704	25,882	83%	-5,311
Multi	391 4 4 4												2013	83%	82%	
	All Programs registrations Nov to date are down 18% from 2013, down 27% from 2012, and down 32% from 2011												2012	74%	73%	
	All Programs registrations monthly average is down 17% from 2013, down 26% from 2012, and down 31% from 2011												2011	69%	68%	
														chg to '14 avg	chg to '14 YTD	

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	TOTAL	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	35,905	40,146	52,970	37,208	34,144	40,592	35,714	39,116	44,083	36,128	35,054	36,169	467,229	38,936		
2012	35,665	39,521	46,692	30,554	36,743	33,437	32,226	37,179	31,752	41,106	34,450	33,674	432,999	36,083	93%	-2,853
2013	34,777	34,753	39,525	30,992	31,139	27,467	37,227	35,005	31,214	29,718	25,437	24,098	381,352	31,779	88%	-4,304
2014	27,304	26,789	28,051	28,143	28,600	26,672	27,086	25,897	22,225	25,206	18,498		284,471	25,861	81%	-5,918
Multi	1/2 5/498 2/4												2013	81%	80%	
	All Programs dispositions Nov to date are down 20% from 2013, down 29% from 2012, and down 34% from 2011												2012	72%	71%	
	All Programs dispositions average is down 19% from 2013, down 28% from 2012, and down 34% from 2011												2011	66%	66%	
														chg to '14 avg	chg to '14 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2011	75,183	71,225	59,203	60,086	64,024	61,203	60,107	61,211	58,886	61,349	58,553	55,653	62,224			
2012	55,113	47,540	39,388	44,228	43,982	44,458	45,980	48,183	51,402	48,515	46,318	40,048	46,263	74%	-15,961	
2013	40,368	38,419	34,291	37,401	41,214	43,875	38,202	34,844	30,062	30,217	29,380	31,701	35,831	77%	-10,432	
2014	34,463	33,209	33,026	37,269	37,183	36,725	35,656	33,331	34,401	31,980	30,632		34,352	96%	-1,479	
Multi	502 502 498 502 4 4 4 4												2013	96%	95%	
	All Programs balance Nov to date is down 5% from 2013, down 27% from 2012, and down 45% from 2011												2012	74%	73%	
	All Programs balance monthly average is down 4% from 2013, down 26% from 2012, and down 45% from 2011												2011	55%	55%	
														chg to '14 avg	chg to '14 YTD	

RULING - OTHER TRENDS - FO
 Program Codes 9, 13, 14, 19, 21, 22, 40, 44

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	64	97	92	739	526	510	426	454	207	982	247	251	4,595	383		
2012	182	245	746	576	605	424	229	418	209	315	51	108	4,108	342	89%	-41
2013	292	280	201	234	589	585	432	380	219	89	135	112	3,548	296	86%	-47
2014	156	223	402	791	601	228	231	217	190	119	71		3,229	294	99%	-2
													2013	99%	94%	
													2012	86%	81%	
													2011	77%	74%	

Ruling/Other registrations Nov to date are down 6% from 2013, down 19% from 2012, and down 26% from 2011
 Ruling/Other registrations monthly average is down 1% from 2013, down 14% from 2012, and down 23% from 2011

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	442	399	728	390	424	631	384	397	530	593	389	351	5,658	472		
2012	500	455	299	255	214	165	239	323	170	334	434	171	3,559	297	63%	-175
2013	242	250	424	278	254	248	329	322	574	598	162	223	3,904	325	110%	29
2014	204	383	288	130	156	113	174	106	269	209	160		2,192	199	61%	-126
													2013	61%	60%	
													2012	67%	65%	
													2011	42%	41%	

Ruling/Other dispositions Nov to date are down 40% from 2013, down 35% from 2012, and down 59% from 2011
 Ruling/Other dispositions monthly average is down 39% from 2013, down 33% from 2012, and down 58% from 2011

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2011	4,281	3,977	3,340	3,692	3,792	3,672	3,716	3,772	3,453	3,842	3,698	3,590		3,735			
2012	3,272	3,060	3,509	3,825	4,216	4,475	4,466	4,563	4,602	4,582	4,199	4,133		4,075	109%	340	
2013	4,182	4,212	3,988	3,943	4,275	4,613	4,716	4,776	4,423	3,914	3,887	3,776		4,225	104%	150	
2014	3,724	3,566	3,667	4,329	4,775	4,892	4,914	5,022	4,942	4,851	4,761			4,495	106%	269	
														2013	106%	105%	
														2012	110%	110%	
														2011	120%	120%	

Ruling/Other balance Nov to date is up 5% from 2013, up 10% from 2012, and up 20% from 2011
 Ruling/Other balance monthly average is up 6% from 2013, up 10% from 2012, and up 20% from 2011

TAX TRENDS - FO
Program Codes 15, 17, 18, 32, 45, 46, 47, 48

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	134	168	144	261	140	180	112	266	364	147	248	402	2,566	214		
2012	346	141	196	117	78	335	253	229	254	200	215	214	2,578	215	100%	1
2013	223	245	299	199	243	321	233	264	247	242	307	411	3,234	270	125%	55
2014	232	320	285	230	222	217	217	234	255	178	253		2,643	240	89%	-29
													2013	89%	94%	
													2012	112%	112%	
													2011	112%	122%	
														chg to '14 avg	chg to '14 YTD	

Tax registrations Nov to date are down 6% from 2013, up 12% from 2012, and up 22% from 2011
Tax registrations monthly average is down 11% from 2013, up 12% from 2012, and up 12% from 2011

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	139	173	193	252	176	277	168	278	325	293	323	247	2,844	237		
2012	227	352	322	492	267	217	236	290	284	357	234	195	3,473	289	122%	52
2013	299	222	475	590	375	301	214	263	352	231	151	185	3,658	305	105%	15
2014	208	265	232	129	257	300	200	149	195	174	145		2,254	205	67%	-100
													2013	67%	65%	
													2012	71%	69%	
													2011	86%	87%	
														chg to '14 avg	chg to '14 YTD	

Tax dispositions Nov to date are down 35% from 2013, down 31% from 2012, and down 13% from 2011
Tax dispositions monthly average is down 33% from 2013, down 29% from 2012, and down 14% from 2011

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2011	4,880	4,874	4,824	4,833	4,797	4,700	4,643	4,630	4,666	4,520	4,445	4,593		4,700			
2012	4,711	4,498	4,371	3,995	3,803	3,918	3,931	3,871	3,841	3,683	3,664	3,683		3,997	85%	-703	
2013	3,606	3,629	3,453	3,062	2,930	2,949	2,967	2,965	2,861	2,872	3,028	3,253		3,131	78%	-866	
2014	3,276	3,328	3,381	3,482	3,447	3,363	3,379	3,463	3,523	3,526	3,633			3,436	110%	305	
														2013	110%	110%	
														2012	86%	85%	
														2011	73%	73%	
															chg to '14 avg	chg to '14 YTD	

Tax balance Nov to date is up 10% from 2013, down 15% from 2012, and down 27% from 2011
Tax balance monthly average is up 10% from 2013, down 14% from 2012, and down 27% from 2011

DI TRENDS - FO
Program Codes 7, 10, 11, 12, 16 & 20

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2011	1,537	1,651	1,411	1,691	1,360	1,428	1,405	1,575	1,489	1,392	1,094	1,268	17,301	1,442			
2012	1,395	1,490	1,611	1,256	1,362	1,382	1,206	1,122	1,233	1,069	845	754	14,725	1,227	85%	-215	
2013	982	811	995	971	970	884	1,043	991	1,046	1,086	941	945	11,665	972	79%	-255	
2014	1,004	958	979	1,158	1,088	1,131	1,352	1,027	1,113	1,102	815		11,727	1,066	110%	94	
DI registrations Nov to date are up 9% from 2013, down 16% from 2012, and down 27% from 2011 DI registrations monthly average is up 10% from 2013, down 13% from 2012, and down 26% from 2011													2013	110%	109%		
														2012	87%	84%	
														2011	74%	73%	
															chg to '14 avg	chg to '14 YTD	

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg	
2011	1,295	1,576	1,925	1,512	1,441	1,567	1,365	1,462	1,426	1,579	1,266	1,270	17,684	1,474			
2012	1,334	1,547	1,456	1,424	1,460	1,140	1,079	1,220	999	1,452	938	1,039	15,088	1,257	85%	-216	
2013	1,083	906	1,186	734	758	860	1,026	1,098	1,223	1,298	749	822	11,743	979	78%	-279	
2014	835	891	958	927	1,047	1,038	1,024	1,101	1,241	1,165	965		11,192	1,017	104%	39	
DI dispositions Nov to date are up 2% from 2013, down 20% from 2012, and down 32% from 2011 DI dispositions monthly average is up 4% from 2013, down 19% from 2012, and down 31% from 2011													2013	104%	102%		
														2012	81%	80%	
														2011	69%	68%	
															chg to '14 avg	chg to '14 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,390	2,465	1,951	2,126	2,046	1,905	1,943	2,054	2,117	1,930	1,757	1,755	2,037		
2012	1,815	1,757	1,905	1,734	1,636	1,877	2,005	1,906	2,139	1,755	1,663	1,379	1,798	88%	-239
2013	1,277	1,182	991	1,227	1,437	1,462	1,481	1,374	1,198	986	1,177	1,300	1,258	70%	-540
2014	1,469	1,536	1,557	1,788	1,830	1,922	2,250	2,176	2,048	1,984	1,834		1,854	147%	596

DI balance Nov to date is up 48% from 2013, up 1% from 2012, and down 10% from 2011
 DI balance monthly average is up 47% from 2013, up 3% from 2012, and down 9% from 2011

														2013	147%	148%	
														2012	103%	101%	
														2011	91%	90%	
															chg to '14 avg	chg to '14 YTD	

UI TRENDS - FO

Program Codes 1, 2, 3, 4, 5, 6, 8, 23, 24, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42

NEW OPENED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	38,676	34,399	39,494	35,519	36,159	35,785	32,527	38,079	39,828	36,161	30,799	31,448	428,874	35,740		
2012	33,339	30,233	36,391	33,590	34,531	31,871	32,132	37,791	33,363	36,746	31,266	26,393	397,646	33,137	93%	-2,602
2013	33,691	31,654	33,967	32,876	33,258	28,418	29,941	30,154	24,997	28,576	23,320	25,020	355,872	29,656	89%	-3,481
2014	29,259	24,091	26,279	30,284	26,654	24,702	24,330	22,177	21,805	21,462	16,062		267,105	24,282	82%	-5,374
Multi:	391 4 4 4 4 4 4 4 4 4 4 4												2013	82%	81%	
	UI registrations Nov to date are down 19% from 2013, down 28% from 2012, and down 33% from 2011												2012	73%	72%	
	UI registrations monthly average is down 18% from 2013, down 27% from 2012, and down 32% from 2011												2011	68%	67%	
													chg to '14 avg		chg to '14 YTD	

CLOSED CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	34,029	37,998	50,124	35,054	32,103	38,117	33,797	36,979	41,802	33,663	33,076	34,301	441,043	36,754		
2012	33,604	37,167	44,615	28,383	34,802	31,915	30,672	35,346	30,299	38,963	32,844	32,269	410,879	34,240	93%	-2,514
2013	33,153	33,375	37,440	29,390	29,752	26,058	35,658	33,322	29,065	27,591	24,375	22,868	362,047	30,171	88%	-4,069
2014	26,057	25,250	26,573	26,957	27,140	25,221	25,688	24,541	20,520	23,658	17,228		268,833	24,439	81%	-5,731
Multi:	112 5/498 2/4												2013	81%	79%	
	UI dispositions Nov to date are down 21% from 2013, down 29% from 2012, and down 34% from 2011												2012	71%	71%	
	UI dispositions monthly average is down 19% from 2013, down 29% from 2012, and down 34% from 2011												2011	66%	66%	
													chg to '14 avg		chg to '14 YTD	

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	63,632	59,909	49,088	49,435	53,389	50,926	49,805	50,755	48,650	51,057	48,653	45,715		51,751		
2012	45,315	38,225	29,603	34,674	34,327	34,188	35,578	37,843	40,820	38,495	36,792	30,853		36,393	70%	-15,358
2013	31,303	29,396	25,859	29,169	32,572	34,851	29,038	25,729	21,580	22,445	21,288	23,364		27,216	75%	-9,177
2014	25,994	24,779	24,421	27,670	27,131	26,548	25,113	22,670	23,888	21,619	20,404			24,567	90%	-2,649
Multi:	502 502 498 502 4 4 4 4 4 4 4 4												2013	90%	89%	
	UI balance Nov to date is down 11% from 2013, down 33% from 2012, and down 53% from 2011												2012	68%	67%	
	UI balance monthly average is down 10% from 2013, down 32% from 2012, and down 53% from 2011												2011	47%	47%	
													chg to '14 avg		chg to '14 YTD	

APPELLATE OPERATIONS TL & Case Aging TRENDS

	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Avg.
Standard	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%	50%
Standard	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%	80%
Standard	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%	95%
08/09 45-Day	52.2%	37.8%	38.4%	33.2%	16.1%	4.7%	13.8%	20.6%	38.7%	30.8%	43.2%	60.0%	32.4%
08/09 75-Day	93.2%	94.9%	92.3%	90.4%	91.2%	87.3%	88.2%	90.6%	93.9%	75.3%	86.7%	92.7%	89.7%
08/09 150-Day	99.6%	99.7%	98.9%	99.0%	99.1%	99.6%	99.1%	99.8%	100.0%	99.4%	99.8%	97.6%	99.3%
Case Aging	30	34	34	32	38	37	33	39	39	37	44	59	38
09/10 45-Day	42.4%	41.8%	39.5%	28.6%	35.6%	28.8%	29.2%	37.3%	40.6%	43.3%	59.4%	80.5%	42.2%
09/10 75-Day	76.2%	85.2%	69.7%	75.9%	78.5%	74.2%	83.2%	88.0%	92.9%	93.3%	91.3%	94.7%	83.6%
09/10 150-Day	82.6%	98.8%	96.7%	99.1%	99.3%	99.3%	99.0%	99.5%	99.6%	99.7%	99.8%	99.4%	97.7%
Case Aging	42	45	41	39	39	39	37	38	34	35	29	26	37
10/11 45-Day	83.1%	80.3%	80.9%	81.5%	83.4%	86.7%	85.9%	77.0%	48.1%	28.8%	11.4%	12.9%	63.3%
10/11 75-Day	97.5%	98.2%	97.5%	98.0%	96.9%	97.2%	98.4%	97.7%	95.6%	89.3%	88.1%	90.1%	95.4%
10/11 150-Day	99.8%	99.9%	99.9%	100.0%	99.4%	99.9%	99.7%	99.8%	99.7%	99.9%	99.6%	99.8%	99.8%
Case Aging	26	28	27	27	25	28	28	33	38	38	36	34	31
11/12 45-Day	5.2%	6.9%	4.6%	10.1%	10.6%	10.5%	11.6%	11.7%	17.2%	16.6%	47.9%	70.0%	18.6%
11/12 75-Day	89.2%	87.9%	60.8%	43.9%	40.0%	43.1%	72.7%	86.4%	89.5%	85.5%	91.0%	90.8%	73.4%
11/12 150-Day	99.7%	99.4%	99.4%	97.3%	98.9%	99.0%	98.9%	99.2%	99.5%	99.3%	99.3%	99.1%	99.1%
Case Aging	39	45	43	47	48	44	39	38	39	37	32	30	40
12/13 45-Day	66.4%	57.4%	20.5%	12.8%	28.7%	40.7%	25.5%	22.1%	14.3%	13.1%	24.0%	53.3%	31.6%
12/13 75-Day	94.0%	91.8%	81.7%	80.9%	80.6%	76.4%	75.4%	83.2%	75.3%	82.7%	76.6%	90.6%	82.4%
12/13 150-Day	99.3%	99.5%	99.4%	99.7%	99.2%	99.0%	99.0%	99.6%	98.3%	99.7%	99.8%	99.7%	99.4%
Case Aging	31	38	44	48	44	49	45	45	41	41	35	29.1	41
13/14 45-Day	62.3%	76.0%	72.4%	56.6%	77.4%	80.5%	74.5%	52.4%	52.5%	51.0%	59.1%	77.1%	66.0%
13/14 75-Day	92.1%	94.4%	90.7%	90.3%	94.8%	96.3%	97.3%	93.1%	92.3%	91.6%	93.3%	96.3%	93.5%
13/14 150-Day	99.7%	99.7%	99.8%	99.8%	99.6%	99.9%	99.9%	99.5%	99.6%	99.4%	99.6%	99.9%	99.7%
Case Aging	30.1	31.0	32.2	30.1	28.4	24.0	31.1	35.0	33.8	31.8	27.8	29.3	30.4
14/15 45-Day	77.9%	79.7%	69.8%	42.1%	48.6%	56.9%	38.5%	39.7%	56.6%	51.0%	59.1%	77.1%	56.6%
14/15 75-Day	96.9%	96.4%	95.7%	96.1%	90.6%	93.4%	91.3%	88.8%	93.7%	91.6%	93.3%	96.3%	93.7%
14/15 150-Day	99.2%	99.8%	99.8%	99.8%	99.7%	99.8%	99.5%	99.5%	99.6%	99.4%	99.6%	99.9%	99.6%
Case Aging	28.3	30.3	32.3	35.1	35.9	37.6	36.0	41.1	34.6	31.8	27.8	29.3	34.6

ALL PROGRAM TRENDS-AO

REGISTRATIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,506	2,625	3,779	3,046	3,318	2,971	3,021	3,267	3,259	3,298	2,341	2,561	35,992	2,999		
2012	2,789	2,316	3,555	2,608	2,418	1,958	2,407	2,932	2,430	2,728	2,376	2,156	30,673	2,556	85%	-443
2013	2,789	2,721	3,003	3,403	2,735	2,082	2,057	2,055	2,359	2,377	1,612	1,665	28,858	2,405	94%	-151
2014	1,681	1,666	1,620	1,959	1,623	1,812	1,847	1,729	1,636	1,873	1,298		18,744	1,704	71%	-701
													2013	71%	69%	
													2012	67%	66%	
													2011	57%	56%	
														chg to '14 avg	chg to '14 YTD	

Registrations Jan to date down 31% from 2013, down 34% from 2012, and down 44% from 2011.

Registration monthly average down 29% from 2013, down 33% from 2012, and down 43% from 2011.

DISPOSITIONS

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	2,601	2,626	2,583	2,546	2,994	3,447	2,361	2,860	4,116	3,804	3,130	3,022	36,090	3,008		
2012	2,917	3,106	3,407	2,747	2,310	1,816	2,653	3,087	2,709	2,341	2,327	2,608	32,028	2,669	89%	-339
2013	2,921	2,314	3,498	2,810	2,605	1,999	2,258	2,716	2,120	1,853	1,660	2,208	28,962	2,414	90%	-256
2014	1,517	1,549	1,743	1,877	1,661	1,634	1,583	1,813	1,925	1,568	1,438		18,308	1,664	69%	-749
													2013	69%	68%	
													2012	62%	62%	
													2011	55%	55%	
														chg to '14 avg	chg to '14 YTD	

Dispositions Jan to date down 32% from 2013, down 38% from 2012, and down 45% from 2011.

Disposition monthly average down 31% from 2013, down 38% from 2012, and down 45% from 2011.

BALANCE OPEN CASES

	Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec	End of Yr Total	Avg.	% Chg of Avg	Yr-Yr AvgChg
2011	3,872	3,870	4,984	5,543	5,814	5,356	6,020	6,423	5,566	5,057	4,265	3,792	3,792	5,047		
2012	3,663	2,902	3,018	2,906	3,014	3,141	2,948	2,758	2,509	2,863	2,894	2,340	2,340	2,913	58%	-2,134
2013	2,057	2,452	1,910	2,509	2,625	2,671	2,484	1,804	2,049	2,575	2,562	1,970	1,970	2,306	79%	-607
2014	2,123	2,235	2,074	2,138	2,120	2,290	2,549	2,459	2,177	2,483	2,330			2,271	98%	-35
													2013	98%	97%	
													2012	78%	77%	
													2011	45%	44%	
														chg to '14 avg	chg to '14 YTD	

Open Balance Jan to date is down 3% from 2013, down 23% from 2012, and down 56% from 2011.

Open Balance monthly average down 2% from 2013, down 22% from 2012, and down 55% from 2011.

APPELLATE OPERATIONS - REPORT SUMMARY

APPELLATE		July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mo. % of Avg.	TOTAL	Appellants Current Mo.
WORKLOAD																	
Registrations																	
UI TL		1,790	1,676	1,563	1,795	1,234								1,612	77%	8,058	
DI		55	39	59	69	52								55	95%	274	
Ruling & T-R		1	7	4	2	0								3	0%	14	
Tax		0	5	10	5	11								6	177%	31	
Other		1	2	0	2	1								1	83%	6	
Total		1,847	1,729	1,636	1,873	1,298								1,677	77%	8,383	1,298
Multi Cases																	
Dispositions																	
UI TL		1,518	1,752	1,871	1,503	1,381								1,605	86%	8,025	
DI		45	50	50	55	45								49	92%	245	
Ruling & T-R		6	1	2	4	5								4	139%	18	
Tax		14	10	0	5	7								7	97%	36	
Other		0	0	2	1	0								1	0%	3	
Total		1,583	1,813	1,925	1,568	1,438								1,665	86%	8,327	1,438
Multi Cases/Ch																	
Balance - Open Cases																	
UI TL		2,432	2,349	2,047	2,340	2,181								2,270	96%		
DI		92	81	91	106	112								96	116%		
Ruling & T-R		2	8	10	8	3								6	48%		
Tax		22	18	28	27	31								25	123%		
Other		1	3	1	2	3								2	150%		
Total		2,549	2,459	2,177	2,483	2,330								2,400	97%		1,330
Multi Cases																	Estimate
FO to AO Appeal Rate																	
UI TL		7.1%	6.5%	6.4%	8.7%	5.2%								6.8%	77%		
DI		5.3%	3.8%	5.4%	5.6%	4.5%								4.9%	91%		
Ruling & T-R		1.0%	4.4%	4.0%	0.8%	0.0%								2.0%	0%		
Tax		0.0%	2.5%	6.7%	2.6%	6.3%								3.6%	175%		
Other		8.3%	13.3%	0.0%	8.3%	7.1%								7.4%	96%		
Overall Rate		6.8%	6.4%	6.3%	8.4%	5.1%								6.6%	78%		

APPELLATE OPERATIONS ~ REPORT SUMMARY

APPELLATE	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Average	AO Current Mfo. % of Avg.
TIME LAPSE														
45 Day-50 %	42	49	57	39	40								45	88%
75 Day- 80 %	96	91	93	91	89								92	97%
150 Day- 95 %	100	100	100	99	100								100	100%
CASE AGE														
Avg Days-UI (mean)	35.2	35.9	37.6	36.0	41.1								37.2	111%
Avg Days-UI (median)	31.0	31.0	34.0	32.0	34.0								32.4	105%
Over 120 days old														
UI Cases	21	19	15	13	16								17	95%
UI %	1%	1%	1%	1%	1%								1%	90%
UI % without Multis	1%	1%	1%	1%	1%								1%	90%
NET PYS USED														
ALJ	12.58	13.82	11.70	11.72									12.5	94%
AO Non ALJ	24.25	25.42	23.76	25.50									24.7	103%
CTU Non ALJ	3.46	3.97	4.15	4.20									3.9	106%
Net Pys	40.29	43.21	39.61	41.42	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	41.1	101%
RATIOS														
AO w/o transcribers	1.93	1.84	2.03	2.18									1.99	110%
AO with transcribers	2.20	2.13	2.39	2.53									2.30	110%
TRANSCRIPTS														
	55	58	49	42	28								46	60%
PAGES														
	3,148	3,824	2,909	3,092	1,882								2,971	63%
AVG PGS Per T/S														
	57	66	59	74	67								65	104%
PRODUCTIVITY														
ALJ Disp/wk	28.6	29.8	43.3	29.1									32.7	89%
Trans Pgs/day	41.36	43.78	36.89	32.01									38.5	83%

APPELLATE OPERATIONS - REPORT SUMMARY

APPELLATE	Jan	Feb	March	April	May	June	July	Aug	Sep	Oct	Nov	Dec	Average	AO Current Mo. % of Avg.	TOTAL	Appellants Current Mo.
WORKLOAD																
Registrations																
UI TL	1,620	1,608	1,558	1,883	1,572	1,743	1,790	1,676	1,563	1,795	1,234	1,234	1,640	75%	18,042	
DI	35	45	36	60	48	57	55	39	59	69	52	52	50	103%	555	
Ruling & T-R	2	0	8	7	2	4	1	7	4	2	0	0	3	0%	37	
Tax	24	11	18	9	1	8	0	5	10	5	11	11	9	119%	102	
Other	0	2	0	0	0	0	1	2	0	2	1	1	1	138%	8	
Total	1,681	1,666	1,620	1,959	1,623	1,812	1,847	1,729	1,636	1,873	1,298	1,298	1,704	76%	18,744	1,298
Multi-Cases																
Dispositions																
UI TL	1,443	1,490	1,689	1,817	1,599	1,548	1,518	1,752	1,871	1,503	1,381	1,381	1,601	86%	17,611	
DI	59	37	38	50	45	46	45	50	50	55	45	45	47	95%	520	
Ruling & T-R	5	4	4	2	4	8	6	1	2	4	5	5	4	122%	45	
Tax	8	16	12	7	13	32	14	10	0	5	7	7	11	62%	124	
Other	2	2	0	1	0	0	0	0	2	1	0	0	1	0%	8	
Total	1,517	1,549	1,743	1,877	1,661	1,634	1,583	1,813	1,925	1,568	1,438	1,438	1,664	86%	18,308	1,438
Multi-Cases/CI																
Balance - Open Cases																
UI TL	1,994	2,106	1,936	1,986	1,979	2,166	2,432	2,349	2,047	2,340	2,181	2,181	2,138	102%	21,388	
DI	52	61	60	68	71	82	92	81	91	106	112	112	80	141%	80	
Ruling & T-R	2	4	8	13	11	7	2	8	10	8	3	3	7	43%	7	
Tax	74	63	69	71	59	35	22	18	28	27	31	31	45	69%	45	
Other	1	1	1	0	0	0	1	3	1	2	3	3	1	254%	1	
Total	2,123	2,235	2,074	2,138	2,120	2,290	2,549	2,459	2,177	2,483	2,330	2,330	2,271	103%	25,271	1,330
Multi-Cases																Estimate
FO to AO Appeal Rate																
UI TL	7.1%	6.2%	6.2%	7.0%	5.8%	6.4%	7.1%	6.5%	6.4%	8.7%	5.2%	5.2%	6.6%	79%		
DI	4.3%	5.4%	4.0%	6.3%	5.2%	5.4%	5.3%	3.8%	5.4%	5.6%	4.5%	4.5%	5.0%	89%		
Ruling & T-R	0.9%	0.0%	2.2%	2.6%	1.6%	3.0%	1.0%	4.4%	4.0%	0.8%	0.0%	0.0%	1.9%	0%		
Tax	13.0%	5.3%	6.8%	3.9%	0.8%	3.1%	0.0%	2.5%	6.7%	2.6%	6.3%	6.3%	4.6%	137%		
Other	0.0%	15.4%	0.0%	0.0%	0.0%	0.0%	8.3%	13.3%	0.0%	8.3%	7.1%	7.1%	4.8%	150%		
Overall Rate	7.0%	6.1%	6.0%	7.0%	5.8%	6.3%	6.8%	6.4%	6.3%	8.4%	5.1%	5.1%	6.5%	79%		

**California Unemployment Insurance Appeals Board
Board Appeal Summary Report**

Average Days in Transfer from FO Received Date to Date Received at AO

	November, 2014	October, 2014	September, 2014	August, 2014
	Average Days in Transfer			
	Case Count	Case Count	Case Count	Case Count
Fr	0.83	0.77	0.46	0.79
	70	78	112	86
Ing	1.63	2.23	1.39	3.70
	156	177	221	163
Inl	0.80	0.51	1.05	1.72
	116	204	221	180
LA	0.68	1.03	1.44	3.06
	85	131	144	169
Oak	1.24	2.79	1.31	2.33
	55	71	105	132
OC	0.48	0.60	0.62	0.20
	112	203	138	169
Ox	0.00	0.40	0.34	0.06
	50	96	80	222
Pas	3.80	5.07	5.29	5.47
	41	115	122	91
Sac	0.81	1.91	2.45	1.91
	100	184	230	219
SD	4.69	4.40	5.86	7.82
	68	112	206	130
SF	1.21	1.30	1.40	2.25
	47	67	105	75
SJ	0.78	2.55	0.69	1.54
	74	101	70	82
Tax	0.67	0.33		0.31
	6	3		16
Total	1.29	1.83	2.09	2.36
	980	1542	1754	1734

**California Unemployment Insurance Appeals Board
Board Appeal Summary Report**

Average Days in Transfer from Date Received at AO to Board Appeal Event Date

	November, 2014	October, 2014	September, 2014	August, 2014
	Average Days in Transfer			
	Case Count	Case Count	Case Count	Case Count
Fr	2.32	3.44	6.98	4.41
Ing	2.79	3.09	8.33	6.58
Inl	2.39	2.78	7.75	5.65
LA	2.63	3.47	7.53	5.19
Oak	2.43	3.46	9.09	4.99
OC	2.54	3.30	8.11	4.32
Ox	2.41	3.92	6.78	4.86
Pas	2.31	2.99	9.78	4.16
Sac	3.43	5.26	11.52	5.01
SD	1.61	3.18	8.72	4.57
SF	3.17	5.36	9.22	5.65
SJ	1.90	3.68	8.69	6.30
Tax	5.33	10.00		13.56
Total	2.55	3.60	8.69	5.21

Monthly Board Meeting Litigation Report - November 2014

AGENDA ITEM 9

LITIGATION CASES PENDING

TOTAL = 302

SUPERIOR COURT:	Claimant Petitions.....	246
	Employer Petitions.....	38
	EDD Petitions.....	2
	Non-benefit Court Cases	4
APPELLATE COURT:	Claimant Appeals.....	6
	Employer Appeals.....	3
	EDD Appeals.....	0
	Non-benefit Court Cases	1
ISSUES:	UI.....	262
	DI.....	19
	Tax.....	14
	Non-benefit Court Cases	7

2014 CALENDAR YEAR ACTIVITY - Benefit & Tax Cases

LITIGATION CASES FILED

YTD

November

SUPERIOR COURT:	Claimant Petitions.....	35	2
	Employer Petitions.....	7	0
	EDD Petitions.....	0	0
APPELLATE COURT:	Claimant Appeals.....	4	0
	Employer Appeals.....	0	0
	EDD Appeals.....	0	0

LITIGATION CASES CLOSED

YTD

November

SUPERIOR COURT:	Claimant Petitions.....	73	4
	Employer Petitions.....	8	0
	EDD Petitions.....	1	0
APPELLATE COURT:	Claimant Appeals.....	11	3
	Employer Appeals.....	4	1
	EDD Appeals.....	0	0

2014 Decision Summary

<u>Claimant Appeals</u>	<u>Employer Appeals</u>	<u>CUIAB Decisions</u>
Win: 9 Loss: 72	Win: 2 Loss: 8	Affirmed: 80 Reversed: 9 Remanded: 2

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

NOVEMBER 2014 PERFORMANCE INDICATORS

FIELD OPERATIONS

MEETING DOL STANDARDS UI TIMELAPSE CASES

	<u>Closed</u>	DOL <u>Standard</u>
Closed Cases		
% Closed in <= 30 Days	63.0%	≥60%
% Closed in <= 45 Days	79.2%	≥80%

	<u>Avg. Days</u>	DOL <u>Standard</u>
Pending Cases		
Case Aging	31.5	≤30

	<u>UI</u>	<u>ALL</u>
WORKLOAD		
Opened	16,062	17,201
Closed	17,228	18,498
Balance of Open Cases	20,404	30,632

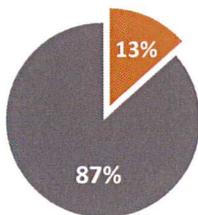
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	41 days
DI Appeals (including PFL)	76 days
All Programs	49 days

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	92%
UI Extensions as % of All UI	8%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 13% of UI Open Balance, and Regular UI cases made up 87%.

APPELLATE OPERATIONS

MEETING DOL GUIDELINES & STANDARDS UI TIMELAPSE CASES

	<u>Closed</u>	DOL <u>Guideline</u>
Closed Cases		
% Closed in <= 45 Days	39.7%	≥50%
% Closed in <= 75 Days	88.8%	≥80%

	<u>Avg. Days</u>	DOL <u>Standard</u>
Pending Cases		
Case Aging	41.1	≤40

	<u>UI</u>	<u>ALL</u>
WORKLOAD		
Opened	1,234	1,298
Closed	1,381	1,438
Balance of Open Cases	2,181	2,330

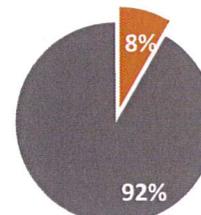
CYCLE TIME: AVERAGE DAYS TO CLOSE APPEALS

UI Timelapse Appeals	55 days
DI Appeals (including PFL)	61 days
All Programs	55 days

UI WORKLOAD COMPOSITION AT INTAKE (OPENED)

Regular UI Appeals as % of All UI	87%
UI Extensions as % of All UI	13%

UI WORKLOAD COMPOSITION AT END OF MONTH OPEN BALANCE:



UI Extensions made up 8% of UI Open Balance, and Regular UI cases made up 92%.

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in November 2014

PFL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	72	9	37	14	3
Inglewood	60	8	25	12	7
Inland	74	5	35	15	7
Los Angeles	89	6	50	15	13
Oakland	94	7	47	12	23
Orange County	91	10	45	15	9
Oxnard	87	11	50	13	1
Pasadena	80	7	48	14	3
Sacramento	63	5	14	15	8
San Diego	71	9	35	16	7
San Francisco	70	6	36	14	5
San Jose	52	6	19	13	4
Statewide	76	7	38	14	8

DI CASES (No PFL)	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	71	9	36	14	3
Inglewood	60	8	25	12	7
Inland	74	5	34	15	7
Los Angeles	89	6	50	15	13
Oakland	98	7	48	12	20
Orange County	92	10	45	15	10
Oxnard	88	11	51	13	1
Pasadena	81	7	49	14	3
Sacramento	67	5	13	15	9
San Diego	73	9	36	16	7
San Francisco	71	7	36	14	5
San Jose	53	6	19	13	4
Statewide	76	7	38	14	8

California Unemployment Insurance Appeals Board
FO Cycle Time Summary Report
For Cases Closed in November 2014

UI Timelapse CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	37	5	15	12	1
Inglewood	35	6	10	11	2
Inland	34	3	9	15	1
Los Angeles	44	3	17	15	4
Oakland	37	4	12	13	2
Orange County	36	3	10	15	2
Oxnard	39	5	13	15	0
Pasadena	52	3	26	14	3
Sacramento	48	3	21	15	3
San Diego	45	5	18	15	2
San Francisco	40	4	16	13	2
San Jose	41	3	19	13	1
Tax Office	N/A	N/A	N/A	N/A	N/A
Statewide	41	4	15	14	2

ALL CASES	Average Days to Process an Appeal	Case Creation Date to Verified Date	Verified Date to Scheduled Date	Scheduled Date to Hearing Date	Hearing Date to Decision Mailed Date
Jurisdiction	Average	Average	Average	Average	Average
Fresno	49	5	17	12	2
Inglewood	52	6	26	12	2
Inland	41	3	13	16	2
Los Angeles	51	3	20	15	5
Oakland	48	5	15	14	5
Orange County	41	3	13	15	3
Oxnard	43	5	17	15	0
Pasadena	55	3	28	14	3
Sacramento	49	3	21	16	4
San Diego	47	5	19	15	2
San Francisco	47	4	19	14	2
San Jose	42	3	19	13	1
Tax Office	287	N/A	N/A	47	42
Statewide	49	4	19	14	3

14/15 Fiscal Year-to-Date Overtime Expenditure									
Branch	FY Y-T-D Decision Typing		FY Y-T-D CTU Typing		FY Y-T-D Registration		FY Y-T-D Other		
	Hours	Pay	Hours	Pay	Hours	Pay	Hours	Pay	Hours
Appellate	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	3.50	\$83.83	
Admin	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	
IT	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	194.75	\$7,730.92	
Exec	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	
Field	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	79.10	\$2,654.36	
Total	0.00	\$0.00	0.00	\$0.00	0.00	\$0.00	277.35	\$10,469.11	

14/15 Fiscal Year-to-Date Total Overtime Expenditures									
Branch	14/15 FY Allocation	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	Allocation Balance	FY 14/15 FY Projections		CTO Expenditures	
						Estimated Expenditures Over-/Under	Hours	Estimated Pay	
Appellate	\$3,975.00	3.50	0.01	\$83.83	\$3,891.17	\$3,723.51	0.00	\$0.00	
Admin	\$0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	21.00	\$1,005.51	
IT	\$39,211.00	194.75	0.56	\$7,730.92	\$31,480.08	\$16,018.24	384.30	\$19,198.68	
Exec	\$0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	0.00	\$0.00	
Field Operations	\$38,648.00	79.10	0.23	\$2,654.36	\$35,993.64	\$30,684.92	6.60	\$174.47	
Total	\$81,834.00	277.35	0.40	\$10,469.11	\$71,364.89	\$50,426.67	411.90	\$20,378.66	
Actual Monthly Average Personnel Year 0.13									

14/15 Fiscal Year-to-Date Lump Sum Payout									
July 2014 through October 2014									
Branch	14/15 FY Allocation	Year-to-Date Hours	Year-to-Date Position Equivalent	Year-to-Date Pay	Allocation Balance	14/15		Estimated	
						Estimated Expenditures Over-/Under	Hours	Estimated Pay	
Appellate	\$3,975.00	2,151.30	1.03	\$110,285	\$126,443.00	-\$204,410.74			
Admin	\$0.00	0.00	0.00	\$0	\$14,192.00	\$14,192.00			
IT	\$132.20	132.20	0.06	\$4,544	\$39,547.00	\$25,914.79			
Exec	\$0.00	0.00	0.00	\$0	\$12,441.00	\$12,441.00			
Field Operations	\$10,945.50	10,945.50	5.26	\$621,569	\$949,757.00	-\$914,950.18			
Total	\$13,229.00	13,229.00	6.36	\$736,398	\$1,142,380.00	-\$1,066,813			

There was \$5,476 charged to overtime in October. However, the expenditures were actually payouts to two employees for excess hours earned during previous fiscal years. We are working with EDD to ensure that charging these expenditures to "overtime" is correct.

As reported during the November board meeting, lump sum payouts continue to decrease and only \$40,700 was expended in October. The projected shortfall in September of \$1.6 million is now projected at \$1.1 million and is expected to balance by the end of 2014-15.

12/3/14 vg



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
P O Box 944275
SACRAMENTO CA 94244-2750

NELLYA OSTAPENKO
LEGAL SERVICES OF NORTHERN CALIFORNIA
Claimant-Appellant

Case No.: **AO-336919**

OA Decision No.: 4893615

EDD: 0190 BYB: 01/13/2013

DECISION

Attached is the Appeals Board decision in the above-captioned case issued by Board Panel members:

ROBERT DRESSER

MICHAEL ALLEN

JOHN ADKISSON

ROY ASHBURN, Written Dissent

This is the final decision by the Appeals Board. The Appeals Board has no authority to reconsider this decision. If you disagree with the decision, please refer to the information attachment which outlines your rights.

Date Mailed: 08/27/2014

Case No.: AO-336919
Claimant: NELLYA OSTAPENKO

The claimant appealed from the decision of the administrative law judge that held the wages earned by the claimant for providing caregiver services for her son through the In-Home Supportive Services (IHSS) program were insufficient to establish a claim under sections 1275 and 1281 of the Unemployment Insurance Code (UIC)¹, given that the claimant's services were exempt from employment under code section 631.

ISSUE STATEMENT

The issue before us is whether the wages the claimant earned through the IHSS program for providing care to her disabled son constitute wages in covered employment under code sections 1275 and 1281, or whether the wages were for services exempt from the definition of employment based on familial relationship under code section 631.

FINDINGS OF FACT

The In-Home Supportive Services Program is a state social welfare program established in 1973 and designed to avoid institutionalization of incapacitated persons. The program is funded by a combination of federal, state and county dollars. It provides supportive services to aged, blind or disabled persons who cannot perform the services themselves and who cannot safely remain in their homes unless the services are provided to them. The program compensates persons who provide the services to a qualifying incapacitated person.² IHSS workers are eligible for unemployment insurance (UI) benefits if their wages are not statutorily exempt and they are otherwise eligible for benefits under the UIC.

In 1992, the California Legislature enacted a series of statutes providing for the use of public authorities by counties providing IHSS services.³ In 1998, in a letter to all counties, the Department of Social Services (DSS) mandated that all counties using a public authority to provide IHSS services enter into an interagency agreement specifying the services to be provided. In 2000, Sacramento County established the Sacramento County In-Home Supportive Services Public Authority (Public Authority) to assist in the delivery of IHSS

¹ Unless otherwise noted, all statutory references are to the Unemployment Insurance Code.

² *Basden v. Wagner* (2010) 181 Cal.App.4th, 929, 931.

³ Welfare and Institutions Code, section 12301.6

services⁴ and entered into an interagency agreement (the contract) with the Public Authority to provide those services. The agreement provides that the Public Authority acts as the "employer of record" for individual providers serving IHSS recipients, providing assistance to recipients in finding IHSS personnel through a registry, establishing a referral system to refer IHSS personnel to recipients, investigating qualifications and background of potential IHSS providers, providing recipient input through the IHSS Advisory Committee, and providing for training for IHSS providers and recipients. The Public Authority also agreed to provide Sacramento County with the information and materials needed for billing services to the DSS and for approval of DSS and the California Department of Health Services of the reimbursement rate for the Public Authority and any rate adjustment. In addition, the Public Authority agreed to use county administrative, legal, financial, labor relations and clerk services, as well as accounting and clerical support and other county services as deemed necessary.

The claimant worked as an IHSS personal caregiver for her disabled son from the time he was four years old until he died at age 23. There was no evidence that the county hired the claimant, or any of its IHSS workers as county employees pursuant to civil service laws and rules. The claimant was paid directly through direct deposit by the state of California, with deductions for union dues and health insurance. The state did not withhold personal income taxes and the record does not establish whether or not the state made contributions for unemployment insurance for this or other claimants.

After her son died, the claimant filed a claim for unemployment insurance benefits which was effective January 13, 2013. Based on the claim effective date, the Employment Development Department (EDD) determined a base period of October 1, 2011 through September 30, 2012. The base period is prescribed by statute⁵ and used to determine if the claimant has sufficient wages to establish a claim and the amount of the claim. The only wages during the base period of October 1, 2011 through September 30, 2012 were paid to her through the IHSS program for caring for her son. Her wages totaled more than \$1,000 in each quarter of 2012.

The Employment Development Department issued a Notice of Determination finding that the claimant had insufficient wages in her base period to establish a

⁴ The parties having been noticed and having expressed no objection, we take official notice of All County Letter 98-20, issued by the Department of Social Services on March 17, 1998, requiring counties using public authorities to enter into interagency agreements with the public authorities pursuant to Social Services Standards, section 30-767, subdivision .214. We also take judicial notice of the interagency agreement entered into between Sacramento County and the Public Authority on September 12, 2000. Both documents are added as exhibits to the record of this case. Evidence Code, section 452, subdivisions (b), (c) and (h); California Code of Regulations, title 22, section 5009.

⁵ Unemployment Insurance Code, section 1275.

claim. The decision of the administrative law judge affirmed the Notice of Determination and at least implicitly found the claimant's son was her sole employer, and therefore her IHSS wages were excluded from employment under code section 631.

REASONS FOR DECISION

Because we find the claimant's son was not her sole employer, and for other reasons discussed below, we will reverse the conclusion of the administrative law judge that the claimant's wages should be excluded.

The UIC contains several definitions of "employer" and specifies the circumstances under which wages earned from a particular employer can be used to establish an unemployment insurance claim. The UIC also defines wages from some employment as exempt and not available to establish a claim for unemployment benefits.

The primary issue before us is whether the wages the claimant earned through the IHSS program for providing care to her disabled son were for services excluded from the definition of employment under section 631.

Code Section 631 provides:

Employment for purposes of unemployment benefits does not include service performed by a child under the age of 18 in the employ of his father or mother, or services performed by an individual in the employ of his son, daughter, or spouse, except for disability benefits to the extent that the employer and the employee have, pursuant to section 702.5 elected to make contributions to the Unemployment Compensation Disability Fund.

The result in this case depends on whether or not the language "in the employ of" in section 631 applies to service performed by an individual "in the employ of" her son, while also jointly employed for the same work by another employer or employers.

Employer contributions to the Unemployment Fund accrue and become payable by employers "with respect to wages paid for employment." (Unemployment Insurance Code, section 976). Thus, if the claimant's IHSS earnings are not wages paid for "employment," no employer contributions are payable and her earnings are not useable to establish a claim.

Under the IHSS scheme, this premise is obviously tinged with absurdity since, even though these welfare recipients may technically be designated as “employers,” the elderly and indigent recipients of the program could hardly be expected to pay employer contributions into the unemployment insurance system. As far as this Board is aware, none do.

Nevertheless, the statutes governing IHSS and even a statute defining “employment” under the Unemployment Insurance Code state that the welfare recipient himself may be considered, under specified circumstances, to be at least one of several possible entities considered to be the “employer” of the IHSS worker. (Welfare and Institutions Code, sections 12301.6, subd. (c)(1), 12302.2 and 12302.25; Unemployment Insurance Code, section 683).⁶

We begin by examining the history, significance and wording of section 631. Section 631 was originally enacted in 1953, twenty (20) years before establishment of IHSS and almost forty (40) years before the statutory creation of public authorities for purposes of delivery of IHSS services. The statute was later amended in 1971, still years before public authorities were in existence. According to the Enrolled Bill Report, one of the purposes of the statute was to protect against unemployment fraud that could arise because of collusion between specific family members with control over the employment relationship.⁷ Such collusion, while not impossible in an IHSS recipient/provider relationship, is hardly likely given the fact that it is the responsible government authorities which are financially liable for unemployment insurance benefits which serve in the role of employer with respect to interaction with EDD. This concern is also minimized by the extensive governmental oversight and control of the employment relationship, including the termination of the relationship.

Section 631 does not define the term “in the employ of.” The plain language of the statute gives no indication as to whether or not the Legislature intended to exempt wages based solely on the familial relationship between caregiver and

⁶ The Board is also cognizant of the recent decision of the United Supreme Court in *Harris v. Quinn*, 573 U.S._____, 2014 U.S. Lexis 4504 (decided June 30, 2014). In *Harris*, the Court examined the employment relationship between a worker providing services under the same federal program as described in this decision but under a statutory scheme unique to the State of Illinois. The Court concluded, among other things, that workers such as the claimant in Illinois were not what it called full-fledged public employees, but were merely deemed to be public employees solely for the purpose of unionization and collective bargaining (Id. at p. 38) Nevertheless, nothing in the majority opinion contradicted Justice Kagen’s dissenting opinion that, regardless of the full-fledged or partial character of the home care worker’s status as a public employee, there was, even under the Illinois statutes, a “joint” employment relationship. (Id. at p. 82). For this reason, and because California’s statutory scheme described in this decision is materially distinguishable from the Illinois law, nothing in *Harris* is relevant to the outcome of this Board’s adjudication of the matter before it.

⁷Enrolled Bill Report, Governor’s Office, Chapter No. 1447, 1971, California State Archives, Office of the Secretary of State, Sacramento.

care recipient, or whether the exemption would apply even if the claimant had joint employers, one or more of which was not a family member.⁸

One UIC provision, Section 683, sets forth an express statutory definition of “employer” that applies to caregivers working through the IHSS program. The statute provides three alternative ways that “any employing unit” can meet the definition of “employer”. It specifically provides:

“Employer” also means any employing unit⁹ which employs individuals to perform domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code and pays wages in cash of one thousand dollars (\$1,000) or more for such service during any calendar quarter in the calendar year or the preceding calendar year, and is one of the following:

- (a) The recipient of such services, if the state or county makes or provides for direct payment to a provider chosen by the recipient or to the recipient of such services for the purchase of such services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.
- (b) The individual or entity with whom a county contracts to provide in-home supportive services.
- (c) Any county which hires and directs in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service systems.

The statute does not, on its face, preclude the possibility of multiple or joint employers. In fact, the statute clearly allows for the possibility of multiple or joint employers under the definition by emphasizing that “employer also means any employing unit [which would include a public authority] which employs” IHSS workers with sufficient earnings, “and is one of the following.” By defining the employer as “any employing unit,” the plain language of the statute can only be read as being inclusive of “any” employing unit falling within the three listed categories.¹⁰

⁸ As explained in more detail below, the impact of employment by more than one individual on the applicability of the 631 exemption is addressed in Title 22, section 631-1 and was analyzed by this Board in Precedent Benefit Decision (P-B-111).

⁹ “Employing unit” includes “any public authority.” (Unemployment Insurance Code, section 135 (a)(3)).

¹⁰ Nothing in this decision shall be construed to mean that the definitions in section 683 are the exclusive definitions relevant in construing the meaning of “in the employ of” in section 631. Indeed, section 631 was enacted long before section 683 existed and IHSS workers “related” to recipients within the meaning of 631 may actually be “in the employ of” other employing units not listed in section 683, including counties, public authorities, and the State of California. As discussed in this decision, economic reality

Thus, as a threshold matter, we must determine whether the claimant was employed by one or more than one “employing unit.”

Care Recipient as Employer

Code section 683, subd. (a) provides, in pertinent part, that the care recipient is the employer only if the caregiver is paid directly by the government and was “chosen by the recipient.” As noted above, the claimant was paid directly for her services by the state through a check from the State of California with deductions for union dues and health care.¹¹

Whether or not the claimant was “chosen by the recipient” is a more difficult question. The claimant’s son was only four when the claimant became his caregiver under the IHSS program. Given the age of her son at the beginning of claimant’s IHSS employment, it is possible that the claimant initially became her son’s caregiver as a matter of parental rights.¹² We have no evidence of record, however, as to how the claimant initially became her son’s caregiver, nor do we know whether the recipient had input in choosing to continue the employment relationship prior to the recipient’s death decades later. We do know that the claimant remained her son’s caregiver during the base period of the claim, through the time he attained the age of majority, and until his death at age 23. The son’s death was the occasion for claimant’s separation from employment.

Nevertheless, it is unnecessary to remand for a more complete record on whether claimant was “chosen by the recipient” within the mean of Section 683(a) for reasons explained below.

For purposes of this analysis we shall assume that the son as the recipient of IHSS services was one employer of the claimant within the meaning of Section

dictates that even if benefit recipients who do not pay for the services rendered are considered employers as a statutory construct, IHSS workers are in the employ of at least two and possibly multiple entities which share employer obligations and functions

¹¹ The State, in fact, is the entity that assumes responsibility for UI contributions for eligible IHSS workers. Welfare and Institutions Code, section 12302.2

¹² The right of parents to the companionship, care, custody, and management of their minor children is an important interest that warrants deference and protection. *Lassiter v. Department of Social Services of Durham County, N.C.*, (1981) 452 U.S.18. The right will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. *In re Isayah C.* (2004) 118 Cal.App.4th 684. The choice of a caregiver to provide IHSS services for her son is within the claimant’s right of care, custody and management. The phrase “chosen by the recipient” could reasonably be construed to mean chosen by the recipient or an individual who had the legal authority to act on behalf of the recipient, such as a parent of a minor child, legal guardian or conservator. The claimant’s son was not a minor during the last five years she cared for him, which period includes the base period of the claimant’s unemployment claim. Upon reaching the age of 18, the son continued with the claimant as his caregiver.

683(a). There are, indeed, numerous reasons for assuming that the statutory framework for the IHSS program intended, even if as a fiction, to regard recipients as employers.¹³

The facts that Sacramento County has established and contracted with the Public Authority to deliver IHSS services, and that a specific employer's role is set forth in statute for the Public Authority in the delivery of those services, however, raise the issue of whether, under section 683, subdivision (b) or (c), the Public Authority or the County are also employers of the claimant within the definition set forth in section 683.

Public Authority as Employer

As noted above, in 1992 the California Legislature enacted section 12301.6 of the Welfare and Institutions Code. That section allowed the counties to create, by ordinance, public authorities, and to contract with them to provide IHSS services on behalf of the county. These contracts resulted in a sharing of responsibilities delineated in the statutes between a number entities and individuals.

Under the statute, a public authority is a corporate public entity, separate from the county, exercising a number of public and essential governmental functions. It has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract to provide IHSS services in accordance with a county plan. The public authority is charged with making or providing for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. The statute further specifies that "employees of the public authority are not employees of the county for any purpose." (Welfare and Institutions Code, section 12301.6(b)(2)(B).)

The law provides that any public authority established pursuant to the law shall perform, but not be limited to, the following functions:

- (1) Establishing a registry to assist care recipients to find caregivers.
- (2) Investigating the qualifications and background of potential personnel.
- (3) Establishing a referral system to refer caregivers to care recipients.
- (4) Providing for training for providers and recipients.
- (5) Performing any other functions related to the delivery of in-home supportive services.

¹³ For example, subject to the public authorities' rights to assist in the finding of caregivers, to investigate qualifications and background, and to establish referral systems and training, recipients purportedly retain the right to hire, fire and supervise the work of any in-home supportive services personnel providing services to them. (Welfare and Institutions Code, section 12301.6, subds. (c)(1) and (h).)

(6) Ensuring that the requirements of the personal care option pursuant to Federal law is met.

(Welfare and Institutions Code, section 12301.6(e), Sacramento County Code, section 297.060(a).)

The above statute specifically sets forth the functions of the public authority for which it is deemed to be the employer of IHSS personnel, and also the employer functions reserved to other entities or individuals.

Section 12301.6 establishes that a public authority has substantial control over the training, referral, background investigation of qualifications, pay and benefits of an IHSS worker. The public authority is specifically "deemed to be the employer" of IHSS personnel for the purpose of collective bargaining regarding wages and other terms and conditions of employment.¹⁴ As noted, the claimant had union dues deducted from her paycheck for collective bargaining purposes.

The statute also states that recipients shall retain the right to hire, fire and supervise the work of any in-home supportive services personnel providing services to them. (Welfare and Institutions Code, section 12301.6, subs. (c)(1) and (h).)¹⁵

Under section 12301.6(b) (2) (B) of the Welfare and Institutions Code, the purpose for the creation of a public authority is "to provide for the delivery of in-home supportive services." The public authority has the power to contract with the county to provide such services and the law sets forth the specific employer functions to be performed by the public authority.

Since, as described more fully above, the County in this case did establish a Public Authority and did enter into a contract (the interagency agreement) under which the Public Authority provides IHSS services, we find that the Public Authority is an "entity with whom a county contracts to provide in-home

¹⁴ Government Code, section 3500 *et seq.* Although a care recipient by statute retains the right to hire a provider who has not been referred by the public authority, that provider must be referred to the public authority "for the purposes of wages, benefits, and other terms and conditions of employment." (Welfare and Institutions Code, section 12301.6, subd. (h).)

¹⁵ This scheme and other statutory provisions raise the serious question not addressed in this decision regarding whether or not a recipient, in fact, actually "chooses" his provider (as is required under section 683) or, on the other hand, merely "recommends" a provider who is normally approved by the State, the County, or the Public Authority. In some instances, the recipient may not have the mental facility or inclination to participate at all in this decision. The answer to this question does not alter the interpretation of UIC Section 631 in this case, and we therefore do not address it.

supportive services” under UIC section 683(b) and is therefore an employer of the claimant.

The County’s Role; the County is not the Employer under Section 683.

The county does have a significant role in performing a number of functions related to operation of the IHSS program, including, but not limited to, authorizing services for an IHSS recipient, determining the level and quality of services required, conducting any subsequent assessment of need for services, collecting timesheets and worksheets from the caregiver, and terminating the recipient’s participation in the IHSS program. (Title 2, chapter 2.97, section 297.060 of the Sacramento County Code).¹⁶ Indeed, for purposes of the granting or denial of Unemployment Insurance benefits it could be suggested that the most important function of an employer is the counties’ function in “terminating the recipient’s participation” which is likely to lead directly to the unemployment of the caregiver.

Nonetheless, the record contains no evidence that the county hired the claimant in accordance with county civil service requirements or merit system requirements. Therefore, based on the information of record, and having found the claimant an employee of the Public Authority, we find that Sacramento County is not the claimant’s employer within the meaning of Section 683, subdivision (c).

Joint Employers In Other Contexts

Whether a claimant providing IHSS services can have more than one employer, or “joint” employers under section 683 for purposes of unemployment law has not been specifically addressed by the courts.¹⁷ The courts have, however, issued decisions regarding whether there can be joint employers of IHSS workers for purposes of workers’ compensation benefits and for purposes of employee rights and benefits under the Fair Labor Standards Act (FLSA) and California’s wage and hour laws. While those cases are not necessarily binding in an unemployment law context, they are instructive in our analysis under UIC Section 631.

¹⁶ Thus, our finding that the County does not meet the definition in Section 683, subdivision (c) should be construed narrowly as it does not affect the County’s potential status as employer under different statutes or the common law of employment relationships.

¹⁷ However, as we have noted, the plain language of 683 allows for no other interpretation. Not only is the sentence construction susceptible to no other interpretation other than the possibility that more than one employing entity might qualify, but the statute provides no indication of which qualifying employer would be designated as “the” employer in the situation, where, as here, more than one entity might qualify under the three subdivisions.

In the worker's compensation area, Labor Code section 3351.5 addresses the issue of who is an "employee" for purposes of determining whether IHSS workers are entitled to worker's compensation benefits. That section defined "employee", in pertinent part, to be:

... (b) Any person defined in subdivision (d) of Section 3351¹⁸ who performs domestic service comprising in-home supportive services [citation omitted]. For purposes of Section 3352, such person shall be deemed an employee of the recipient of such services for workers' compensation purposes if the state or county makes or provides for direct payment to such person or to the recipient of in-home supportive services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.

In *IHSS v. WCAB* (1984) 152 Cal.App.3d 720, a case that arose before the statutory creation of public authorities, the IHSS worker was paid directly and worked for three care recipients over the relevant time period. She was injured helping one of the recipients for whom she had not worked enough hours and by whom she had been paid insufficient wages to qualify for worker's compensation.

The court held that for purposes of workers' compensation, IHSS workers are deemed to be employees of the care recipient if the state or county pays the care recipient or the care provider directly. (Id. at p. 732) The court further found that although, by statute, the care provider in that case was an employee of the recipient and did not earn sufficient wages to be eligible for benefits based on the earnings from that one employer, there was nothing in the law that precluded a finding of dual employment. In fact, the court noted, simultaneous employment was not a novelty in the law of worker's compensation.¹⁹ Moreover, the court noted the legislative directive to construe worker's compensation law in favor of coverage where there was ambiguity. (Id. at p.740). The court concluded that the state was also an employer, and the county, in overseeing the program, acted as an agent of the state. The state was found to be a joint employer along with the care recipient, and benefits were payable.

In *Bonnette v. Health and Welfare Agency*, (704 F.2d 1465 (9th Cir.1983)) the Ninth Circuit Court of Appeals found that, given their roles in the county's IHSS

¹⁸ Section 3351, subdivision (d) includes as one definition of "employee" the following: Except as provided in subdivision (h) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

¹⁹ Neither is the concept of "joint employers" foreign to unemployment law. See P-B-111, discussed p. 12.

program, the state and county were joint employers along with the recipient under the FLSA.

In *Guerrero v. Sonoma County* (213 Cal.App.4th 912; 153 Cal Rptr. 3d 315, decided in February of 2013, and modified on March 11, 2013 (2013), review denied June 12, 2013, S210134), the court held that the trial court erred in determining, as a matter of law, that the County and the Public Authority were not joint employers of IHSS workers under the FLSA and California wage law. As to the FLSA claims, the court relied on specific expansive FLSA language regarding who can be an employer.

Joint or Multiple Employers in the Unemployment Context

Assuming for purposes of argument that the claimant's son, as the care recipient, is an "employer" of the claimant and that the Public Authority is also the claimant's employer, the issue next to be resolved is whether Section 631 still exempts claimant's wages, even given the fact that claimant was in the employ of, at minimum, two employers, one of which was her son and one of which was a separate governmental entity with very significant control of the actual employment relationship.

Despite the statutory differences, we recognize a judicial trend in the *Bonnette*, *IHSS v. WCAB* and *Guerrero* decisions to find that the state, county and public authority function, in economic reality, as joint employers with the care recipient to effectuate the purposes of those laws. Consequently, while these cases found joint employment under their respective statutory provisions, we must turn to section 631 of the UIC, to determine in this case whether or not the purposes of the unemployment laws support a construction under which the claimant is entitled to benefits.

The UIC was adopted to provide benefits for persons unemployed through no fault of their own, and to reduce involuntary unemployment and the suffering caused thereby to a minimum. ((Unemployment Insurance Code, section 100).

The Unemployment Insurance Act . . . is a remedial statute, and the provisions as to benefits must be liberally construed for the purpose of accomplishing the objects of the Act. (*Empire Star Mines v. California Employment Commission* (1946) 28 Cal.2d 33).

The purposes of the unemployment insurance system are best served by recognizing the reality of joint employers within the IHSS context. Therefore, we find the claimant had joint employers under section 683, subdivisions (a) and (b),

including the Sacramento Public Authority and, arguably, her son, the care recipient.

Having concluded that the Public Authority was an employer of the claimant under subdivision (b), and assuming that the claimant's son was an employer under subdivision (a), we next consider whether the claimant can rely on having joint employers under section 683 to defeat an argument that her IHSS earnings were earned "in the employ of" her son under section 631.

The Claimant's Wages From Joint Employers Are Not Exempt Under Code Section 631.

The familial relationship exemption has been in the Unemployment Insurance Code for more than six decades and has never been interpreted by any court, by the Employment Development Department, or by this Board to prohibit a claimant from collecting unemployment insurance benefits unless the claimant's sole employer was a "son, daughter, or spouse." As discussed below, the exemption has been persistently found to be inapplicable where a claimant is employed by an entity controlled by such a family member, but also by a person who is not a "son, daughter, or spouse." Nevertheless, it is a question for the Board's first impression whether the existence of multiple employers will defeat application of the exemption, just as the existence of, for example, an unrelated partner in a partnership would defeat the exemption when a claimant's "son, daughter, or spouse" is one of the other partners. Because we can see no principled reason, consistent with our duty to interpret the code liberally for claimants, to distinguish these types of cases, we will find section 631 inapplicable here.

In another context, the California Unemployment Insurance Appeals Board found the section 631 exemption based on a familial relationship inapplicable where the earnings were attributable not only to the parent of the claimant, but to a third party. In Precedent Decision P-B-111 the Board held that earnings by a minor from a partnership comprised of his father and his uncle's corporation were not exempt and could be used to establish a claim. The Board considered whether, based upon section 631-1(e), title 22, California Code of Regulations,²⁰ the earnings from each partner would be exempt if earned outside of the partnership.

²⁰ The regulation which defines "Family Employment" for purposes of code section 631 provides, in pertinent part:

(e) Services performed in the employ of a partnership by a spouse, father, mother, or child under the age of 18 are excluded when such services would be excluded if performed for each partner individually. (emphasis added). For example:

- (1) The services of either spouse employed by a partnership composed of the other spouse and one or more of their children are excluded;
- (2) The services of either parent employed by a partnership composed of their children are excluded.

We find the reasoning in P-B-111 and section 631-1(e) to be helpful in the case before us.²¹ Although that case and the regulation involve single legal entities, it seems even more appropriate to apply the test where, as here, the claimant was arguably jointly employed by her son and the Public Authority, whose interests were less closely aligned than those of the partners in P-B-111.²²

Section 631 excludes from employment “service by an individual in the employ of his son, daughter or spouse” If the son was the claimant’s sole employer, the claimant’s services would be exempt, so the wages from those services would not be in covered employment and would not be useable to establish a claim. However, we have found that, at minimum, the Public Authority was also an employer of the claimant.²³

Using the rationale in P-B-111 and the regulatory interpretation, if the claimant was employed by both her son and the Public Authority, her base period wages while in the employ of the Public Authority would not be exempt under section 631, and her total wages would be useable to establish a claim. If the claimant

(3)The services of a child under the age of 18 employed by a partnership composed of his or her parents are excluded.

(4)The services of a married child under the age of 18 in the employ of a partnership composed of his or her father and his or her spouse are excluded.

(f) Services performed by an individual in the employ of relatives other than those referred to in Section 631 of the code are not excluded. For example, services performed by an individual in the employ of his or her brother, sister, niece or nephew are not excluded.

(California Code of Regulations, title 22, section 631-1)

²¹ It is axiomatic that “[w]hen faced with a problem of statutory construction, [courts show] great deference to the interpretation given the statute by the officers or agency charged with its administration.” *Udall v. Tallman*, 380 U.S. 1, 16 (1965).] In P-B-111, earnings paid by the claimant’s father would be exempt under UIC section 631 if the claimant worked only for his father because they were earned “in the employ of his father.” However, earnings paid by the corporation would not be exempt because earnings from an uncle or an uncle’s corporation are not exempt under section 631. This Board found that because the claimant’s wages paid by the uncle and the corporation were not exempt, they could be used to establish his claim, notwithstanding the father’s involvement in the entity. Similarly, we find today that the claimant’s non-familial employer, the public authority, may be used to establish the claimant’s claim.

²² It is also noteworthy that the EDD on-line instructions appurtenant to its regulations regarding familial employers provide additional examples in which multiple employer influences do not fall within the meaning of section 631. Employment Development Department Family Employment Information Sheet, DE231FAM. The information sheet states earnings from corporations and limited liability companies are not excluded, and it specifies the type of partnerships whose paid earnings are excluded. While not addressing joint employers specifically, the information sheet states the principle clearly: “If any partner does not meet the family criteria, the family member would not be excluded.” Despite this sweeping interpretation by EDD, a party to this case, the Department has made no attempt to distinguish the facts in the instant matter. It appears that EDD has presumed that the claimant’s sole employer was her son.

²³ Even were it not for our analysis under code section 683, given the obligations imposed by economic reality and other statutes, the State and County might arguably be regarded as third and fourth joint employers.

was employed solely by the Public Authority, her wages would, of course, also not be exempt.²⁴

For 19 years the claimant acted as caregiver for her disabled son in her home. This benefitted society at large in that her son did not need to enter a care facility, a much costlier option. Moreover, even if the disabled son was an employer under a statutory construct, the reality of the situation is that neither the son nor any other IHSS benefit recipient is a payer into the Unemployment Insurance System or an actual source of income to the provider. They are, by definition, indigent, needy recipients of public assistance.

Since the claimant was not in the sole employ of her son, and at least one of her employers does not meet the family criteria, the claimant's wages are not excluded. To hold otherwise would contradict decades of understanding and interpretation of section 631, under essentially identical circumstances.

In conclusion, considering the plain language of Section 683, subdivision (b), the liberal construction applied to provisions of the UIC, our prior precedents and Title 22, California Code of Regulations, section 631-1, the remedial purpose of the code and its regulations, the public authority's role as a joint employer, and the minimal risk of collusion that existed here at the time of death of claimant's son, we conclude that the claimant's IHSS earnings during the relevant period are not exempt, her services during that time were in covered employment, and those earnings are useable to establish a claim for unemployment insurance benefits.

DECISION

The decision of the administrative law judge is reversed. The Notice of Determination is reversed. The claimant's IHSS base period earnings are wages in covered employment under code sections 1275 and 1281. Her services as a caregiver are not exempt under section 631 and can be used to establish a claim. The matter is referred to the Employment Development Department to establish the claim.

²⁴ This is possible under Section 683 since we have not expressly found that claimant's child initially chose his caregiver within the meaning of Section 683, subdivision (a).

DISSENTING OPINION

The Board majority, by approving the decision in this case, disregards an unambiguous legislative decision to deny benefits to those IHSS caregivers who are providing care to their children. In so doing, the Board effectively amends a section of the Unemployment Insurance Code and commits the State of California to paying potentially massive amounts of money in benefits that it can ill afford. Since the Board has provided no legitimate legal argument to support a decision that essentially usurps the legislature's prerogative to decide who is a potential beneficiary of unemployment benefits, I respectfully dissent.

This precedent assumes that a lengthy analysis of existing law is necessary to unravel a dense statutory and regulatory thicket that obscures the correct resolution of this case. In fact, most of the analysis in the majority opinion is devoted to issues that are either undisputed or irrelevant. The analysis itself unnecessarily complicates the very simple resolution of the only issues that are presented by the facts before us.

Only two statutes actually *apply to* this case; sections 631 and 683 of the Unemployment Insurance Code. Neither statute is complicated or ambiguous. In fact, the relevant part of section 631 is enough to decide this case. It simply states that employment "does not include...service performed by an individual in the employ of [her] son." As the precedent admits, the claimant's son is, if not her only employer, at least one of two employers. The claimant is therefore performing services in the employ of her son and her wages from that service cannot be counted toward the amount needed to be eligible for benefits.

Section 683, as it *applies* to this case, is no more complex than section 631. The relevant part states that, for claimants who perform work under the IHSS program, the term 'employer' "also means...[t]he recipient of such services." In other words, section 683 confirms what is already explicit in section 631: the claimant's son is at least one of her employers.

Taken together, sections 631 and 683 express a simple and straightforward rule. For IHSS caregivers who are taking care of their own children, the child recipient is an employer of the caregiver. As a result, the caregiver is "in the employ" of that child and the wages earned in that work cannot be used to qualify for unemployment insurance benefits. We need go no farther than that to decide this case.

Much of the precedent is devoted to an argument that the Sacramento County Public Authority was also the claimant's employer. That proposition *may* be true, but it is simply irrelevant here. The fact that some entity other than the claimant's son might also be her employer does not change the fact that the claimant was working for her son. No matter how many other employers the claimant might have, her son is still one of them. The term 'employment' therefore does not apply to her work and the wages she receives do not count for unemployment purposes.

The precedent takes two giant leaps to avoid this straightforward result. First, the precedent relies on case law that does not apply in the unemployment context to establish that employment by the son and the public authority constitutes "joint employment." Then, the precedent relies on an earlier precedent in a factually dissimilar case to equate the *fabricated* "joint employment" with the partnership that, through application of a specific regulation, provided the claimant in that case relief from the section 631 exemption.

The first giant leap made by the precedent is its reliance on three cases that it uses to establish its theory that the claimant had "joint employers": *Guerrero v. Sonoma County* (2013) 213 Cal.App.4th 912, *In-Home Supportive Services v. Workers' Compensation Appeals Board* (1984) 152 Cal.App.3d 720 ("*IHSS v. WCAB*"), and *Bonnette v. California Health and Welfare Agency*, 704 F.2d 1465 (9th Cir. 1983). None of these cases support the decision.

Two of these cases consider whether it is possible to have joint employers in the context of the Fair Labor Standards Act and the third considers the same question in the context of the workers' compensation statutes. These cases also raise an issue of who is the employer for purposes of applying the statute under consideration. Each of them, however, discusses a statutory scheme quite different from our unemployment insurance statutes and uses a definition of "employer" that is not the one *used* for unemployment cases. In *Bonnette* and *Guerrero*, the courts *use* the definition of employer in the Fair Labor Standards Act. (704 F.2d at 1469; 213 Cal. App 4th at 928.) In *IHSS v. WCAB*, the court uses the definition of employer for workers' compensation cases. (152 Cal.App.3d at 727.) These definitions are all broader than ours and are therefore unhelpful in resolving the issues before us in this case.

The cases themselves recognize this difference and explicitly warn against using their analysis in other contexts. Footnote 12 in *IHSS v. WCAB*, for example, states that "we emphasize this conclusion is grounded on the definition of employee for workers' compensation coverage and has no necessary application to dissimilar contexts." (152 Cal.App.3d at 733 n.12.) *Bonnette* and *Guerrero* are

even less helpful than *IHSS v. WCAB* in establishing the concept of joint employers since the federal FLSA regulations specifically allow for joint employers, (29 C.F.R. § 791.2(a).) There is no similar regulation addressing any type of joint employment in the unemployment insurance context.

The precedent's second giant leap is that *it* equates the factual scenario in Precedent Decision P-B-111 with the facts of this case. In fact, P-B-111 says little or nothing about any of the issues in this case. The claimant in P-B-111 did not work for multiple or joint employers. He worked for a single employer, a partnership between the claimant's father and a corporation owned by his uncle. The partnership operated the laundry that employed the claimant. In P-B-111, we relied on the specific language of section 631-1(e) of Title 22, California Code of Regulations, that states:

...[s]ervices performed in the employ of a partnership by a spouse, father, mother, or child under the age of 21 of a partner are excluded when such services would be excluded if performed for each partner individually. (*Emphasis added*).

The entire analysis in that precedent consists of four sentences that do no more than state the obvious: since one of the partners was a corporation, and not one of the claimant's relatives, the claimant's wages were not excluded under section 631. This precedent is inadequate to support the overbroad interpretation relied on by the majority in this case to reach the conclusion desired.

The precedent uses P-B-111 to claim that we have "persistently" found the section 631 exemption "to be inapplicable where a claimant is employed by an entity controlled by such a family member, but also by a person who is not a son, daughter, or spouse." It goes *on* to state that it can see "no principled reason" to distinguish this case from those. These statements are both overbroad and incorrect.

While we have undoubtedly applied P-B-111 to cases involving partnerships, *there is* no evidence, and the precedent supplies none, that we have ever applied it outside of that context. There is certainly no evidence that we have ever used P-B-111 in our IHSS cases. The statement that there is no principled basis for distinguishing P-B-111 from this case is simply false. There are, as explained above, several such reasons, not least among which are the lack of a regulation addressing the situation of IHSS caregivers and the explicit statutory language of section 631 which allows for the result in P-B-111 and does not allow for the result reached here.

The logic behind the precedent's reliance on P-B-111 seems to be as follows. In P-B-111, we looked to see if the claimant had an employer who was not excluded by section 631. If one employer was not excluded, the wages were not excluded. Like the claimant in P-B-111, the claimant here has more than one employer and one of them is not excluded. Therefore, the claimant's wages are not excluded.

This line of analysis ignores the fact that the claimant in P-B-111 did not have more than one employer. His only employer was the partnership and the regulations provide a specific rule for dealing with partnerships. The rationale in P-B-111 is inapplicable to the facts before us if only because the relationship between the claimant's son and the Sacramento Public Authority is not a partnership.

The precedent consistently uses the phrase "joint employers" to refer to the relationship between the claimant's son and the Sacramento Public Authority. The reason for this is not obvious from the decision unless this language simply repeats that found in *Bonnette, Guerrero, and IHSS v. WCAB*. Use of this phrase confuses our issue, however, since it implies that the claimant's son and the public authority together form a single legal entity akin to a partnership that can be considered an employer of the claimant. If that were so, the analogy to P-B-111 might hold water.

Section 683, however, specifically limits the use of the term "employer" to three possibilities; the care recipient, a county, and some entities with which counties contract. It does not allow for the possibility that some combination or hybrid of the three listed possibilities can be an employer. On the contrary, it states that an employer must be "one of the following," and implies that the options are mutually exclusive. Notably, the legislature did not state that the employer could be "one or more of the following," nor did it use any other language that implies that anything other than one of the three possibilities listed could be considered the employer of the IHSS caregiver.

In addition to the problems with its legal argument, the precedent also fails to find support in the record for some of its factual assertions. Foremost among them is the assertion that any contrary conclusion "would contradict decades of understanding and interpretation of section 631, under essentially identical circumstances." There are certainly no court cases interpreting this aspect of section 631 and there is absolutely no evidence that our own decisions fit the bill. An equally unjustified assertion is the precedent's statement that the collusion between parents and their children that formed the Legislature's rationale for adopting section 631 "while not impossible" is now "hardly likely" to occur because government authorities are now financially liable for the benefits paid

and because there is now "extensive governmental oversight and control of the employment relationship." There is no evidence in the record to support this overly optimistic assertion. Moreover, decisions as to the best way to prevent fraud are, in any event, ones for the Legislature to make, not this Board.

For the same reasons, even a good faith effort to advance social policy cannot serve as a basis for extending benefits to those specifically excluded by the legislature. In 1971, the legislature amended section 631 to allow disability insurance coverage for family employment. The original version of the bill also allowed elective coverage for unemployment insurance for family member employees but that coverage was opposed by EDD's predecessor agency because of what was deemed a "collusion hazard." The department withdrew its opposition to the bill once the amendment was limited to disability coverage only; the possibility of collusion in disability benefits cases was considered to be minimal because of the requirement of a physician's certification of the disability claim.²⁵ At that time, the Legislature decided that concerns about collusion and fraud had more force than arguments for providing benefits. The legislature has revised the code many times since the enactment of those statutes and has never seen fit eliminate the exemption. Whether present conditions call for a different rule is a suitable topic of debate by our Legislature, but our job is to interpret the existing Unemployment Insurance Code, not to re-write it to suit our vision of what the law should be. As our Supreme Court has warned, courts "may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." (California Federal Savings & Loan Assn. v. City of Los Angeles (1995) 11 Cal.4th 342, 349.)

All but a handful of California's smallest counties have public authorities. Under the rationale of this decision, parents who provide IHSS services for their children will virtually always have enough wages to qualify for benefits, exactly the opposite of what the legislature intended when it adopted section 631. The precedent not only ignores the Supreme Court's warning not to "rewrite the law or give [] words an effect different from the plain and direct import of the terms used" but gives the words of section 631 a meaning that is the exact opposite of what the section's drafters intended. (11 Cal. 4th at 349.) Decisions like this have

²⁵ Cal. Human Res. Dept., Enrolled Bill Rep. on Assem. Bill No. 1420 (1971 Reg. Sess.) November 2, 1971, p.1.

tremendous financial and public policy implications. If the section is in some way unfair or unjust, it is up to the legislature to change it. I therefore dissent from the precedent's attempt to usurp the Legislature's prerogatives.²⁶

ROY ASHBURN

²⁶ The extent to which the majority asserts an ability to overturn decisions made by the people's elected representatives can be found in many places . One particularly striking example of this can be found in the first sentence on page four of the precedent. This describes the legislature's decision to exempt the wages of familial caregivers as "obviously tinged with absurdity." Whatever powers this Board possesses, they do not extend to vetoing legislative decisions that the Board finds distasteful.

REFERRAL INFORMATION

The Board's decision refers the case to the Employment Development Department for appropriate action as set forth in the decision.

The matter is being sent to the Office of the Director at:

**EMPLOYMENT DEVELOPMENT DEPARTMENT
P O BOX 826880
SACRAMENTO CA 94280-0001
1-800-300-5616**

Any future correspondence should be addressed to that office. It is important that you notify the above office of any change in your address.



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

SACRAMENTO OFFICE OF APPEALS
2400 Venture Oaks Way, Ste 100
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(916) 263-6706

NELLYA OSTAPENKO
LEGAL SERVICES OF NORTHERN CALIFORNIA
Claimant-Appellant

Case No. 4893615

Issue(s): 1275(a)

Date Appeal Filed: 05/31/2013

EDD: 0190 BYB: 01/13/2013

Date and Place of Hearing(s):
(1) 07/25/2013 SACRAMENTO

Parties Appearing:
Claimant

DECISION

The decision in the above-captioned case appears on the following page(s).

The decision is final unless appealed within 20 calendar days from the date of mailing shown below. See the attached "Notice to Parties" for further information on how to file an appeal. If you are entitled to benefits and have a question regarding the payment of benefits, call EDD at 1-800-300-5616.

Richard S. Nishite, Administrative Law Judge

FILE COPY

Date Mailed: **AUG 13 2013**

Case No.: 4893615

CLT/PET: Nellya Ostapenko

Parties Appearing: Claimant

Parties Appearing by Written Statement: None

Sacramento Office of Appeals

ALJ: Richard S. Nishite

ISSUE STATEMENT

The claimant appealed a determination that held the claimant not eligible for benefits under code section 1275, subdivision (a). The issue in this case is whether the claimant had sufficient wages during the base period of the claim for the unemployment insurance claim with a benefit year beginning January 13, 2013.

FINDINGS OF FACT

The claimant worked for approximately 19 years as a County of Sacramento In-Home Supportive Services (IHSS) care provider for her son, last earning \$10.40 per hour. The claimant was one of two care providers. She last contracted for 170 hours of service per month. The claimant's employment ended when her son passed away in November 2012 at age 24.

The claimant submitted a claim for unemployment insurance benefits establishing a benefit year beginning date of January 13, 2013. The claimant's claim was deemed invalid. Her wages as an IHSS provider was not allowed because the claimant was employed by her son.

The claimant's 2012 Form W-2 Wage and Tax Statement identifies Victor Ostapenko as the employer. She earned wages of \$19,848.40 in calendar year 2012.

REASONS FOR DECISION

Unemployment insurance benefits are based on wages paid in the base period of a claim. The standard base period of a claim with a benefit year beginning in January, February, or March is the four consecutive quarters which ended the preceding September. (Unemployment Insurance Code, section 1275, subd. (a).)

A new claim is invalid unless the claimant (1) has been paid wages for employment of at least \$1,300 during the base period quarter in which his or her wages were the highest; or (2) has been paid wages of at least \$900 during the base period quarter in which his or her wages were the highest and has been paid total base period wages for employment of not less than 1.25 times the

amount of the high quarter wages. (Unemployment Insurance Code, section 1281, subd. (a).)

"Employment" does not include service performed by a child under the age of 18 years in the employ of his father or mother, or service performed by an individual in the employ of his son, daughter, or spouse, except to the extent that the employer and the employee have, pursuant to Section 702.5, elected to make contributions to the Unemployment Compensation Disability Fund. (Unemployment Insurance Code, section 631.)

As the above section excludes from employment services performed by an individual in the employ of his or her son, the claimant's wages cannot serve as base period wages for her claim under code section 631.

Unemployment Insurance Code section 683 provides:

"Employer" also means any employing unit which employs individuals to perform domestic service comprising in-home supportive services under Article 7 (commencing with Section 12300), Chapter 3, Part 3, Division 9 of the Welfare and Institutions Code and pays wages in cash of one thousand dollars (\$1,000) or more for such service during any calendar quarter in the calendar year or the preceding calendar year, and is one of the following:

- (a) The recipient of such services, if the state or county makes or provides for direct payment to a provider chosen by the recipient or to the recipient of such services for the purchase of services, subject to the provisions of Section 12302.2 of the Welfare and Institutions Code.
- (b) The individual or entity with whom a county contracts to provide in-home supportive services.
- (c) Any county which hires and directs in-home supportive personnel in accordance with established county civil service requirements or merit system requirements for those counties not having civil service systems.

Section 683 defines employer as an employing unit which employs individuals to perform in-home support services and pays wages of \$1,000 or more during any calendar quarter in the current or previous calendar year. If the county makes a direct payment to a care provider chosen by the recipient of services or to the recipient for the purchase of such services, the recipient of the services is the employer. As the claimant's son ostensibly had the power to hire and fire his provider, and as the claimant was paid more than \$1,000 during the calendar quarter in the previous calendar year by the County of Sacramento IHSS program, the claimant's son is considered the employer for UI purposes.

Claimant contends that Unemployment Insurance Code section 683, subdivision (c) confers county civil service status upon IHSS care providers. The County of Sacramento therefore is an employer of the claimant. Claimant, however, cites no persuasive authority for this proposition. It is not disputed that the County of Sacramento "hires and directs in-home supportive personnel"; however, claimant cites no authority that her hiring is accomplished through "established county civil service requirements or merit system requirements." In general, civil service requirements include testing and appointments based on merit. By contrast, IHSS care providers are not tested and not appointed based on merit. Instead, IHSS care providers must complete and sign an enrollment form, be fingerprinted and go through a criminal background check, participate in an orientation, and sign a IHSS Program Provider Enrollment Agreement. This process does not include competitive testing and appointments are not based on one's ranking on a test.

Claimant cites *Guerrero v. Superior Court of Sonoma County (Weber)* (February 11, 2013, A133202) ___ Cal.App.4th ___ in support of her position that the County of Sacramento is an employer. The holding in *Guerrero*, however, is not dispositive in deciding this matter. In *Guerrero* the Court of Appeal concluded that for purposes of petitioner's federal and state wage and hour claims, the County of Sonoma was an employer. However, *Guerrero* did not address the issue of specified family members providing care under the IHSS program. Moreover, petitioner Guerrero was not seeking UI benefits; rather, she was litigating federal and state wage and hour claims.

It is not disputed that the claimant devoted her life to her son's care. Denying her wage credit for the care she provided in this regard appears unfair; however, the legislature in enacting the above statutory provisions has deemed care provided and wages earned in this specific circumstance not employment for purposes of calculating UI benefits.

DECISION

The department determination is affirmed. The claimant is not entitled to base period wage credit under code sections 631 and 683 for the IHSS wages she earned while providing care for her son.

The claimant's claim for unemployment insurance benefits with a benefit year beginning January 13, 2013 is not valid under code sections 1275, subdivision (a) and 1281, subdivision (a).

SAC:rsn/rsn

DECISIONS SENT TO

NELLYA OSTAPENKO
PO BOX 277566
SACRAMENTO, CA 95827-7566

LEGAL SERVICES OF NORTHERN CALIFORNIA
515 12TH ST
SACRAMENTO, CA 95814
