DWD PROPOSAL D15-01 – *LEGAL RED FLAGS*

Social Security Disability Insurance (SSDI) and UI Benefits

In 2013 Wis. Act 36, the Legislature enacted Wis. Stat. § 108.04(12)(f), which provides in relevant part:

> **108.04(12)(f) 1.** Any individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter.

The commission was first called upon to interpret this statutory language in *In re: Gary Kluczynski,* UI Dec. Hearing No. 14400214AP (LIRC May 30, 2014)(copy attached). The commission is bound by the rules for interpreting statutes that require statutes to be read plainly, giving meaning to every word, but not adding words to a statute to give it a certain meaning. If the language of a statute is clear and unambiguous, resort to legislative history is unnecessary and even can be improper.[1]

The commission interpreted the plain meaning of the statute that states any individual who "actually receives" Social Security Disability Insurance (SSDI) benefits "in a given week" is ineligible for unemployment benefits "in that same week" and found there was no ambiguity in the statutory language. Giving each word its ordinary meaning, and ignoring no words and not adding any words, the commission found that the plain meaning of the statute makes a claimant ineligible for benefits only in a week the claimant "actually receives" SSDI benefits. In other words, duplicate payments of UI and SSDI benefits were prohibited in the same week the claimant received the SSDI benefit. This was

---

[1] Although the UIAC passed a resolution regarding the law after the law was enacted, courts have traditionally looked with disfavor on such after-the-fact pronouncements of legislative intent, even from legislators themselves. Indeed, the court has held that it is error to permit a legislator to offer testimony in a court proceeding as to the Legislature's intention. *Cartwright v. Sharpe*, 40 Wis. 2d 494, 508, 162 N.W.2d 5 (1968). Along the same lines, the Supreme Court has said that "members of the Legislature have no more rights to construe one of its enactments retrospectively than has any other private person." Id., 40 Wis. 2d at 508-09, *Northern Trust Co. v. Snyder*, 113 Wis. 516, 530, 89 N.W 460 (1902). Indeed, the Supreme Court in *Northern Trust Co.* added that it is "too elementary to justify [the court] in referring to authority on the question, that a legislative body is not permitted under any circumstances to declare what its intention was on a former occasion so as to affect past transactions." *Id.* at page 530. And beyond that, "it is simply incompatible with democratic government, or indeed, even with fair government, to have the meaning of a law determined by what the lawgiver meant, rather than by what the lawgiver promulgated." *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 52, 271 Wis. 2d 633, 681 N.W.2d 110. For it is the law that governs, not the intent of the lawgiver and people may intend what they will but it is only the laws that are enacted that are binding. *Kalal,* ¶ 52.

consistent with the presumption of eligibility of UI benefits in chapter 108 and the judicial doctrine to read disqualification provisions narrowly.

Although DWD argued to the commission that the statute should be read to mean that claimants are ineligible "in every week in a month for which a claimant receives SSDI benefits," the commission could not make that finding under the rules of statutory construction because it would add words to the plain language of the statute. The commission explained this at length in the *Kluczynski* decision.

The commission had indicated to the DWD that if they thought the intent of the statute was something other than was expressly stated in the statutory language, this was likely just a drafting error and the UIAC could adopt a law change in the next bill cycle.[2] In the meantime, claimants should not be denied UI benefits except for the week they actually receive an SSDI payment.[3] The DWD has now drafted new proposed language for this disqualification in DWD Proposal 15-01.

In general, the proposed language does appear to categorically deny UI claimants who are SSDI recipients from being eligible for UI for any week in any month the claimant receives SSDI benefits, except for the situations involving partial benefits in a month covered in § 108.04(12)(f)1.(a)-(c).[4] The provisions for the exceptions for partial benefits in a month help to illustrate the prudence of the commission's interpretation, and now show a better understanding by DWD of the SSDI program.

THE PROPOSAL PRESENTS DUE PROCESS, EQUAL PROTECTION, AND DISCRIMINATION CONCERNS.

The absolute ban on receiving any UI benefits by an otherwise qualified claimant does raise ***red flags*** of potential due process, equal protection, and discrimination concerns. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) prohibits disability discrimination by any program receiving federal financial assistance, and Title II of the Americans with Disabilities Act

---

[2] It appears that, given the statutory language, as well as the proposed revision to that language, the drafters of the original language did not take into account, or were unaware of, the fact that UI benefits are paid weekly but SSDI benefits are paid monthly.

[3] Higher authority decisions of LIRC are binding on the lower appeal tribunals. See DOL ET Handbook No. 382, Handbook for Measuring UI Lower Authority Appeals Quality, *A Guide to [UI] Benefit Appeals Principles and Procedures.*

[4] The amended § 108.04(12)(f)1. operates by looking at what month a week is "in" and may need clarification. Can a "week" (as already defined in § 108.02(27) as being a calendar week) be said to be "in" a month when only some of the days of that week are "in" that month? This is not necessarily clear in the language. If this is why DWD included the word "entire" in the proposed language, it may be more clearly stated: "...Except as provided in subd. a. to c., an individual is eligible for benefits under this chapter for each week *in or partly in* the calendar month in which a social security disability insurance payment is issued to the individual..."

(ADA) of 1990 (42 U.S.C. § 12101) prohibits discrimination on the basis of disability by public entities. The ADA protects qualified individuals with disabilities from discrimination on the basis of disability in services, programs, and activities provided by state and local governments. These provisions are enforced by the U.S. Department of Justice (DOJ), and they may allow for private causes of action for redress. States are not immune under the eleventh amendment to the U.S. Constitution from an action in federal or state court for violations of these laws. We note the ***red flag*** that the proposed language may subject the State of Wisconsin to actions by otherwise qualified individuals claiming disability discrimination under Section 504 of the Rehabilitation Act of 1973 or Title II of the ADA.[5]

The proposal for an absolute ban on receiving UI benefits if a claimant receives SSDI benefits is different than the federal proposal that recently circulated that provides for a dollar-for-dollar benefit reduction of UI benefits for each dollar of SSDI benefits received for a week.[6] The federal proposal asserts that it eliminates duplicate payments covering the same period a beneficiary is out of work, while still providing a base level of support. Wisconsin previously had a dollar-for-dollar offset for receipt of Social Security benefits as a "pension payment" under Wis. Stat. § 108.05(7)(a); that offset was eliminated in 2001 Wis. Act 35. Such a dollar-for-dollar pension offset, up to 100% of the benefit entitlement, is allowed for federal conformity purposes under § 3304(a)(15) FUTA,[7] and may not raise the same type of discrimination concerns for violations of the Rehabilitation Act or the ADA.

THE PROPOSED LANGUAGE CONFLICTS WITH THE STATED LEGISLATIVE INTENT.

There is also a ***red flag*** in an apparent conflict in the language as drafted and the stated legislative intent. Section 108.04(12)(f)3. in the proposed draft language states that the legislature intends to prevent the payment of duplicative government benefits for the replacement of lost earnings or income. The statement of legislative intent is inconsistent with and potentially in conflict with the proposed statutory language to provide for an absolute bar of UI benefits upon receipt of SSDI benefits. The absolute ban on receipt of SSDI

---

[5] For instance, the statement "regardless of an individual's ability to work" in proposed § 108.04(12)(f)2. suggests that otherwise qualified claimants who are able to work like any other qualified claimant, may be denied all benefits *solely* due to their disability.

[6] The current DWD proposal for a complete ban on UI benefits if someone is receiving SSDI benefits is also inconsistent with how the DWD deals with duplicate SSDI benefit payments in other programs, such as worker's compensation benefits, which are offset by SSDI benefits with a "reverse offset." See Wis. Stat. § 102.44(5). We note a ***red flag*** that this may cause confusion for some parties and lead to unnecessary appeals.

[7] Although this offset is allowed under FUTA, according to the 2014 Comparison of State Unemployment Insurance Laws, only two states offset benefits under the Social Security program, and they do so by 50%.

benefits does not allow for replacement of lost earnings or income as stated in the statement of legislative intent. This is a ***red flag*** because courts may have difficulty interpreting the law as drafted to be consistent with the stated legislative intent.

The legislative intent statement regarding prevention of duplicate payments suggests an intent more along the lines of the federal proposal for dollar-for-dollar offsets to prevent duplicate payments, rather than the total denial of benefits in the DWD proposal. As the commission noted in the *Kluczynski* case, "SSDI is based on earnings over a career, and is funded in part by employee contributions; UI is based on earnings within a year-long base period, and is funded by employer contributions within the base period. The two programs have completely different schedules of benefits. An individual could be entitled to a very low monthly SSDI payment due to low career earnings, such as $100 per month, which could be far less than what the individual would receive in unemployment benefits. Nevertheless, the department proposes that the statute in question be interpreted as barring that individual from any unemployment eligibility on the belief that the claimant would be collecting 'double' benefits. There is no assurance whatsoever that an individual would be spared the economic hazards of unemployment, and therefore would be outside the set of individuals intended to be helped by the unemployment insurance law, simply by virtue of his or her receipt of SSDI."

STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126
http://dwd.wisconsin.gov/lirc/

GARY D KLUCZYNSKI, Employee

UNEMPLOYMENT INSURANCE DECISION

Soc. Sec. No. ***-**-8500
Hearing No. 14400214AP

Dated and mailed:

MAY 30 2014

kluczyn_urr:135:

SEE ENCLOSURE AS TO TIME LIMIT AND PROCEDURES ON FURTHER APPEAL

An administrative law judge (ALJ) for the Division of Unemployment Insurance of the Department of Workforce Development (department) issued an appeal tribunal decision in this matter. The department filed a timely petition for review.

The commission has considered the petition and the position of the department and it has reviewed the evidence submitted to the ALJ. Based on its review, the commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As of week 2 of 2014 (the week beginning January 5, 2014), a claimant is required to inform the department whether he or she is receiving social security disability insurance (SSDI) benefits under 42 U.S.C. Chapter 7, Subchapter II. The newly enacted Wisconsin statute, at Wis. Stat. § 108.04(2)(h), requires a claimant to provide this information when the claimant first files a claim for unemployment insurance (UI) benefits and during each subsequent week the claimant files for UI benefits. The weekly claim certification form now asks the claimant the following question: "Are you receiving any Disability Benefits from Social Security this week?"

In week 2 of 2014, the claimant initiated a claim for unemployment insurance benefits and informed the department that he was receiving SSDI benefits. The claimant receives SSDI in a check directly deposited on or about the third of every month.

The claimant is able to work with reasonable accommodations and most recently worked for a restaurant and lounge before being discharged on or about December 31, 2013 (week 1). The claimant received an SSDI payment on January 3, 2014 (week 1). He received another SSDI payment in week 6 of 2014.

The issue is whether and in which week(s) the claimant, because of the receipt of SSDI benefits, is ineligible for unemployment insurance benefits under Wis. Stat. § 108.04(12)(f).

Wis. Stat. § 108.04(12)(f)[1], provides the following:

> **(f) 1.** Any individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter.
>
> **2.** Information that the department receives or acquires from the federal social security administration that an individual is receiving social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is considered conclusive, absent clear and convincing evidence that the information was erroneous.

In resolving this issue, the commission must determine the relevant statute's meaning under the required statutory analysis set out in *State ex rel. Kalal v. Circuit Court of Dane Cnty.*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. In that case, the Supreme Court held that when determining the meaning of a statute, "[the] legislative history need not be and is not consulted except to resolve an ambiguity in the statutory language..." *Id.* ¶ 51. Rather, statutory construction starts, where possible, by ascertaining the plain meaning of the words of the statute. If the meaning of a statute is plain, the analysis ordinarily stops. *Seider v. O'Connell,* 2000 WI 76, 236 Wis. 2d 211, 232, 612 N.W.2d 659; *Kalal,* ¶ 45.

In determining a statute's plain meaning, the language is read to give reasonable effect to every word, in order to avoid surplusage. *State v. Martin,* 162 Wis. 2d 883, 894, 470 N.W.2d 900 (1991). The court in *Kalal,* ¶ 48, emphasized that the scope, context and purpose are "perfectly relevant to a plain meaning interpretation of an unambiguous statute as long as the scope, context and purpose are ascertainable from the text and structure itself..." Thus, in determining the plain meaning of a statute, its "scope, context and purpose" must be examined within the confines of the statute and act itself. *See Kalal,* ¶¶ 44-52; *Teschendorf v. State Farm,* 2006 WI 89, 293 Wis. 2d 123, 134-135, 717 N.W.2d 258. Where the statutory language is unambiguous, or where its plain meaning does not render absurd results, there is no need to consult extrinsic sources of interpretation, such as legislative history. *Kalal,* ¶ 51; *Teschendorf,* ¶ 12.

When interpreting the unemployment insurance law, it should be "liberally construed to effect unemployment compensation coverage for workers who are economically dependent upon others in respect to their wage-earning status." *Princess House, Inc. v. DILHR,* 111 Wis. 2d 46, 62, 330 N.W.2d 169 (1983).

---

[1] Wis. Stat. § 108.04(12)(f), along with Wis. Stat. § 108.04(2)(h), was enacted July 5, 2013, and first applied with respect to determinations issued or appealed on January 5, 2014. 2013 Wis. Act 36 § 238(9).

Consistent with its purpose, the law presumes employees to be eligible unless disqualified by a specific provision of the law:

> ELIGIBILITY. An employee shall be deemed "eligible" for benefits for any given week of the employee's unemployment unless the employee is disqualified by a specific provision of this chapter from receiving benefits for such week of unemployment, and shall be deemed "ineligible" for any week to which such a disqualification applies.

Wis. Stat. § 108.02(11). In contrast, disqualification provisions of the statute must be strictly construed. *Boynton Cab Co. v. Neubeck and Industrial Commission*, 237 Wis. 249, 259, 296 N.W. 636 (1941) (misconduct provision disqualifying claimants should be read strictly). The statute at issue in this case is a disqualification provision, and therefore must be strictly construed.

The statute at issue plainly states that any individual who "actually receives" SSDI benefits "in a given week" is ineligible for unemployment benefits "in that same week." There is no ambiguity in the wording of the statute. When giving each word its ordinary meaning, and ignoring no words, the plain meaning of the statute requires ineligibility for unemployment benefits only in those weeks that the claimant actually receives SSDI benefits. In construing or interpreting a statute, the commission cannot disregard the plain, clear words of the statute. *Kalal*, ¶ 46.

Therefore, the commission finds that the claimant is ineligible for unemployment insurance benefits only in the weeks he actually receives SSDI under 42 U.S.C. Chapter 7, Subchapter II, here, week 6 of 2014, and any other week he actually receives SSDI under 42 U.S.C. Chapter 7, Subchapter II. The claimant is eligible for unemployment insurance benefits in weeks 2 through 5 and§§ weeks 7 through 9 of 2014,. as well as any other week that he does not actually receive SSDI under 42 U.S.C. Chapter 7, Subchapter II, if he is otherwise qualified.

DECISION

The appeal tribunal decision is affirmed. Accordingly, the claimant is eligible for unemployment insurance benefits in weeks 2 through 5 and 7 through 9 of 2014, as well as any other week that he does not actually receive SSDI benefits, if he is otherwise qualified.

BY THE COMMISSION:

Laurie R. McCallum, Chairperson

C. William Jordahl, Commissioner

David B. Falstad, Commissioner

MEMORANDUM OPINION

The department petitioned for commission review of this matter. The commission now addresses the arguments raised by the department in its petition.

The Plain Meaning of the Statute Limits Benefit Ineligibility to the Week SSDI is Actually Received

The commission starts, as case law instructs, with the words of the statute. Wis. Stat. § 108.04(12)(f)1., provides:

> Any individual who actually receives social security disability insurance benefits under 42 USC ch. 7 subch. II in a given week is ineligible for benefits paid or payable in that same week under this chapter.

There are no specially defined words in the provision. Words critical to the meaning of the provision, such as "actually," "in a given week," and "in that same week," when given their common, ordinary meaning, all point to a single interpretation—that ineligibility for UI benefits occurs only in one *given week*—the week when SSDI is *actually* received.

The department offers what it suggests is the plain meaning of the statute: that an individual who receives SSDI is ineligible for UI benefits for the duration of the month in which he or she receives SSDI. The department argues that because the claimant receives SSDI benefits in a monthly check, the statutory meaning of "actually receives SSDI benefits" is that the claimant "is receiving benefits every week of the month," and therefore the claimant is ineligible for every week the claimant claims UI benefits in a month that the claimant receives an SSDI check.

However, the department's interpretation requires the commission to give the word "actually" its opposite meaning. Rather than finding that a claimant is ineligible when the claimant "actually receives" SSDI benefits, the department would have

the commission interpret "actually receives" to mean "constructively receives SSDI benefits on a weekly basis." Thus, the department's analysis requires giving meaning beyond the plain and ordinary meaning of "in a given week" and "in that same week" to mean "in a given month" and "in any week in that same month." In other words, the meaning offered by the department may only be reached by violating the principles of statutory construction to give words their common, ordinary meaning, to give effect to each word, and to fit the words in context with related statutes.

Statutory purpose or scope is sometimes part of the statutory text. *State ex rel. Kalal v. Circuit Court of Dane Cnty.*, 2004 WI 58, 271 Wis. 2d 633, ¶ 49, 681 N.W.2d. The department asserts that the statute's purpose was to make individuals ineligible for unemployment benefits "while receiving SSDI." The assumption behind the department's assertion of legislative purpose is that since SSDI is a benefit program for people who are "unable to work," those individuals who receive SSDI should be continuously ineligible for benefits under the unemployment insurance program, where recipients must be able and available for work[2]—otherwise recipients would be "double-dipping." However, no statement of that purpose is contained in the statutory text, so it would not be appropriate to accept the department's assertion of this as the statute's unstated purpose.

Instead of attempting to square its interpretation of the statute with standard principles, by which eligibility is presumed and disqualification provisions are strictly construed, the department promotes its interpretation as fulfilling a legislative purpose, not expressed anywhere in Wisconsin's unemployment law, to prevent individuals on SSDI from "double dipping," i.e., receiving unemployment benefits during their period of eligibility for SSDI. The double-dipping argument is based on the idea that the group of individuals eligible for SSDI and the group eligible for UI are mutually exclusive—those on SSDI are unable to work, and those eligible for UI have to be able to work and available for work. Therefore, the department argues, an individual may be eligible for one or the other, but should not be eligible for both.

The first problem with the department's asserted statutory purpose is that the statute contains no statement suggesting that ongoing SSDI recipients who received UI benefits presented a problem that called for the creation of automatic ongoing ineligibility. Certainly for most, if not all, UI claimants who receive SSDI, a question will arise on a case-by-case basis concerning their ability to work and their availability for work. The two provisions, Wis. Stat. §§ 108.04(2)(h) and 108.04(12)(f)2., dealing with reporting ongoing receipt of SSDI involve the department's collection of information regarding SSDI, but nothing in the wording

[2] The commission has rendered decisions, when applying Wis. Admin. Code § DWD 128.01(3), affirming an individual's ability to work under the UI law while simultaneously being eligible for SSDI. *See, e.g., Kouimelis v. Denny's Restaurant 6318*, UI Dec. Hearing No. 12201489EC (LIRC Dec. 4, 2012); *In re Perkins*, UI Dec. Hearing No. 11605816MW (LIRC Jan. 11, 2012); *McDonald v. Bestech Tool Corp.*, UI Dec. Hearing No. 08608578WB (LIRC Mar. 26, 2009).

or context of these new statutory provisions suggests that the prevailing standards for adjudicating ability and availability were inadequate and needed to be replaced by an ongoing automatic ineligibility.

Second, the department's argument ignores the fact that SSDI recipients may still work under certain circumstances. The Social Security Administration (SSA) awards benefits to individuals who are severely impaired due to a serious and long-term medical condition and are unable to perform substantial gainful work as specially defined in the Social Security Act. The act contains the following language:

> An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

42 USC § 423(d)(2)A. An individual may qualify for SSDI because work within his or her ability does not exist "in significant numbers" in the national economy, even though there may be work the individual can do "in the immediate area in which he lives," there may be "a specific job vacancy for him," or "he would be hired if he applied for work." In other words, an individual can look for work, and be able to do work, without it affecting his or her eligibility for SSDI. In fact, the SSA allows SSDI recipients to perform work for a trial period. 42 U.S.C. § 422(c); 20 C.F.R. § 404.1592. Also, the SSA encourages SSDI recipients to maintain connection to the labor market by offering vocational rehabilitation services through its Ticket to Work program. 42 U.S.C. § 1320b-19; 20 C.F.R. Part 411.

Indeed the department, through its own rules, encourages disabled people to remain connected to the labor market by holding out the possibility that they could receive UI benefits. Department rules on ability to work and availability for work clearly contemplate that a disabled individual may nevertheless be considered able and available for purposes of UI eligibility. Wisconsin Administrative Code § DWD 128.01(3) provides that a claimant with a physical or psychological restriction can maintain an attachment to the labor market if he or she can engage in "some" substantial gainful employment (not necessarily in "significant numbers"), and shall not be considered unavailable for work solely because of an inability to work "provided the individual is available for suitable work for the number of hours the individual is able to work." Wis. Admin. Code § DWD 128.01(4). To some extent, the department's double-dipping argument is at

cross purposes with its own current administrative rules regarding ability to work and availability for work.

Finally, the department's double-dipping argument lacks mathematical validity. There is no relationship between the calculation of SSDI benefits and UI benefits, much less a one-to-one correspondence. SSDI is based on earnings over a career, and is funded in part by employee contributions; UI is based on earnings within a year-long base period, and is funded by employer contributions within the base period. The two programs have completely different schedules of benefits. An individual could be entitled to a very low monthly SSDI payment due to low career earnings, such as $100 per month, which could be far less than what the individual would receive in unemployment benefits. Nevertheless, the department proposes that the statute in question be interpreted as barring that individual from any unemployment eligibility on the belief that the claimant would be collecting "double" benefits. There is no assurance whatsoever that an individual would be spared the economic hazards of unemployment, and therefore would be outside the set of individuals intended to be helped by the unemployment insurance law, simply by virtue of his or her receipt of SSDI.

The department also argues that the relevant statute's plain meaning can be ascertained by reading it in context with the newly enacted Wis. Stat. § 108.04(2)(h), which requires claimants to report SSDI benefits in every week the claimant files for UI benefits. Wis. Stat. § 108.04(2)(h), provides:

> A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she *is receiving* social security disability insurance benefits under 42 USC ch. 7 subch. II. (Emphasis added.)

This provision uses the present progressive tense, the tense that indicates continuing action. By using the present progressive, and not attaching it to phrases that limit the time period in question, the legislature addressed the ongoing receipt of SSDI for reporting purposes.

However, in Wis. Stat. § 108.04(12)(f)1., the legislature used the simple present tense "receives," preceded by the word "actually," and used the limiting phrases "in a given week" coupled with "in that same week." This departure from the language used in Wis. Stat. § 108.04(2)(h), passed simultaneously with the statute in question, reinforces the idea that UI ineligibility was intended to be limited to the week that SSDI was received.

The difference in the wording of the statutory sections actually favors the opposite conclusion than that offered by the department. Since the legislature clearly demonstrated the ability to draft language that imposed a continuing requirement on an SSDI recipient to report SSDI while claiming UI on a weekly basis, it could have placed the same continuing ineligibility on a claimant claiming UI benefits in

subsection (12)(f)1. The fact the legislature did not do so strongly suggests that it did not intend to impose a continuous ineligibility of UI benefits under Wis. Stat. § 108.04(12)(f)1.

The department also argues that the legislature's only interest in having claimants who are SSDI recipients continuously report their receipt of SSDI was to make sure they were kept ineligible on a continuing basis. As noted, however, there is no such statement of purpose in the statute, and there may have been a number of other reasons that the legislature wanted the department to know about claimants' ongoing receipt of SSDI benefits, for instance, to alert the department to potential concealment and able and available issues, or to identify claimants who may be in need of special vocational services.

There is nothing necessarily inconsistent with the legislature's requiring a claimant to continually report the status of being a recipient of SSDI, while at the same time disallowing the claimant's eligibility for benefits only in the week an SSDI payment is actually received. Therefore, the department's statutory purpose argument also fails.

The Statute is Not Ambiguous

The department argues in the alternative that the statute is ambiguous because it is capable of being understood by reasonably well-informed persons in two or more senses and that extrinsic sources such as the Unemployment Insurance Advisory Council (UIAC) minutes should be reviewed. However, "[s]tatutory interpretation involves the ascertainment of meaning, not a search for ambiguity." *Kalal*, ¶ 47. The plain meaning of the language used in the statute renders individuals actually receiving SSDI "in a given week" ineligible for benefits paid or payable in "that same week." To read the statute in any other way is searching for an ambiguity not reflected in the statute's language and its plain meaning.

The Plain Meaning of the Statute Does Not Render an Absurd Result

The department argues that the plain meaning of Wis. Stat. § 108.04(12)(f)1., which requires a denial of UI only in the week the claimant actually received SSDI, yields an absurd or unreasonable result not intended by the legislature. The department asserts that the ALJ's reliance on Wis. Stat. § 108.05(7) to deny benefits for only one week in which the SSDI payment is received is "an anomalous, indeed absurd result." Consequently, the department argues that extrinsic sources may be consulted.

As set out above, the plain meaning of Wis. Stat. § 108.04(12)(f)1. is evident from the wording of the statute itself. Simply because the department disagrees with that meaning does not make it absurd. Further, the ALJ's reliance on Wis. Stat.

§ 108.05(7) Pension Payments when applying the statute at hand also does not render an absurd result.

Wis. Stat. § 108.05(7)(d) provides for an allocation of a claimant's pension (other than a pension under the Social Security Act) to the weeks for which UI benefits are claimed. The unemployment insurance law has a provision, Wis. Stat. § 108.05(7)(d), explaining how a claimant's receipt of a pension (other than a pension under the Social Security Act) is *allocated* to weeks for which UI benefits are claimed and provides the following:

> 1. If a pension payment is not paid on a weekly basis, the department shall allocate and attribute the payment to specific weeks in accordance with subd. 2. if the payment is actually or constructively received on a periodic basis...
>
> 2. The department shall allocate a pension payment that is actually or constructively received on a periodic basis by allocating to each week the fraction of the payment attributable to that week.

The legislature could have repeated language in an existing related statute if it wanted to convey the idea that receipt of a monthly check was to be allocated to all the weeks of a month. The department however argues that there was no need for the legislature to make reference to allocation in the new SSDI provision, because that provision *categorically* made recipients of SSDI ineligible for unemployment benefits, no matter what the amount of the individual's SSDI check, while the benefit calculation provisions with respect to pension payments function merely to offset UI benefits that would otherwise be payable.[3] However, this argument undermines the department's argument that the purpose of Wis. Stat. § 108.04(12)(f)1. is to prevent "double dipping" and fails to explain why the statute did not make it explicit that receipt of SSDI once per month is *deemed to be* (if not "allocated" to be) in every week of the month.

The department argues against drawing any inferences based on the legislature's use of allocations with respect to pension payments. The commission, however, concludes that the ALJ's reference to those sections merely points out that the legislature could have used allocation language if it had wanted to do so, and could have used language clearly creating a continuing ineligibility if it had wanted to do so, as opposed to an ineligibility in a "given week," or "that same week."

In sum, the commission concludes that Wis. Stat. § 108.04(12)(f)1. is unambiguous and that its plain meaning does not provide a continuing bar to UI

---

[3] Department's Petition, I. B. p. 5: "A weekly allocation is not necessary for SSDI because when the claimant is receiving SSDI, the claimant is simply ineligible for any unemployment insurance benefits."

eligibility for SSDI recipients who claim weekly UI benefits. Rather, the plain meaning of the statute renders an individual who actually receives SSDI benefits in a given week ineligible for UI benefits paid or payable in that same week. Further, this statute's plain meaning does not render an absurd result and the commission, therefore, did not consider any extrinsic evidence[4] such as legislative history or the documents attached to the department's affidavit.

cc: Attorney Christine Galinat
Dept. Workforce Development/ BOLA
201 E Washington Ave. Rm. E300
PO Box 8942
Madison WI 53708-8942

[4] The department attached documents to the Bureau of Legal Affairs (BOLA) Director's affidavit, included with its petition for commission review. These doucments, numbered one through twelve, include meeting minutes of the Unemployment Insurance Advisory Council (UIAC); an analysis of the proposed UI law change, one dated October 16, 2012, and another dated April, 2, 2013, an e-mail from the Wisconsin Legislative Reference Bureau regarding the proposed statute, dated March 7, 2013; a letter from the Wisconsin Legislature dated April 1, 2013; an analysis of this April 1 letter by BOLA; and finally, UIAC meeting minutes reflecting the council's adoption of a resolution stating the intent of the newly enacted Wis. Stat. § 108.04(12)(f) to disqualify weekly UI claims to SSDI recipients. Other than the UIAC resolution adopted on February 20, 2014, nearly eight months after the law was enacted on July 5, 2013, the documents lack any specific discussion supporting the department's position that receipt of SSDI on a particular day in a given month would result in ineligibility for UI during all the weeks claimed by the claimant. Indeed, it would seem the belated resolution would not have been necessary if the actual legislative history supported the department's interpretation of the statute. The commission respects the UIAC and its process in recommending legislation for the UI program. It is not appropriate, however, when legislation is unambiguous, for the commission to consider the after-the-fact resolution of the UIAC as to what it intended to recommend to the legislature. Not only is this not a statement of the legislature's intent, it does not reflect the plain meaning of the statutory language enacted by the legislature.