

CASE STUDY

AUTOMATED STATEGRAFT: FAULTY PROGRAMMING AND IMPROPER COLLECTIONS IN MICHIGAN'S UNEMPLOYMENT INSURANCE PROGRAM

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A consistent critique about public benefits programs is the idea that they may be ripe for fraud. To combat this concern, states contract with third-party companies to develop coding for their programs to weed out potential bad actors. However, disasters have followed public benefits programs' attempts to create and use automated systems to process claims across the country, especially in the unemployment insurance context.¹ But the very efforts aimed at fraud prevention can create fraud. What follows is a Case Study of one of the more egregious examples of this counter-intuitive truth in Michigan. Automation of state UI systems may have been applied with good intentions, yet punitive rules, an utter lack of oversight, and a naïve faith in technology have left more state-initiated fraud in its wake than had ever actually existed before the program. Michigan was among the first states to “modernize” their entire unemployment insurance system through a contract with a third-party company.² As a result of over-calibrated, faulty algorithmic programming,

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1. See Julia Simon-Mishel, Maurice Emsellem, Michele Evermore, Ellen Leclere, Andrew Stettner & Martha Coven, *Centering Workers—How to Modernize Unemployment Insurance Technology*, CENTURY FOUND. (Oct. 5, 2020), <https://tcf.org/content/report/centering-workers-how-to-modernize-unemployment-insurance-technology/> [https://perma.cc/7EJU-MUED]; Victor Forberger, *The Story of Unemployment Modernization*, WIS. UNEMPLOYMENT <https://wisconsinui.wordpress.com/2020/10/05/the-story-of-unemployment-modernization/> [https://perma.cc/NK96-ZMHS]; see also *Health and Technology Justice Advocates File FTC Complaint against Deloitte for Faulty Medicaid Eligibility Software*, NAT'L HEALTH L. PROGRAM (Jan. 31, 2024), <https://healthlaw.org/news/health-and-technology-justice-advocates-file-ftc-complaint-against-deloitte-for-faulty-medicaid-eligibility-software/>.

2. See Cassidy Johncox, *Michigan UIA to Modernize Computer Systems in Effort to 'Streamline' Claims Processing*, CLICKONDETROIT (Nov. 15, 2022), <https://www.clickondetroit.com/news/michigan/2022/11/15/michigan-uia-to-modernize-computer-systems-in-effort-to-streamline-claims-processing/> [https://perma.cc/U2R9-

the system wrongly charged tens of thousands of claimants as “fraudsters” and billed and collected exorbitant amounts of money that the state had no evidence was actually owed.³

In October 2013, the Michigan Unemployment Insurance Agency (UIA) implemented “MiDAS” – a system designed to automate all unemployment insurance claims *without any human oversight*.⁴ It became clear that MiDAS was not turning their system into gold—but it did drastically increase the state’s own coffers. This program ran without any intervention for nearly two years, despite growing the state’s penalties and interest fund from \$3 million to more than \$69 million just a year after it started.⁵ The state laid off many of their staff in favor of computerized processes.⁶

From October 2013 to August 2015, the MiDAS system issued over 60,000 fraud determinations with a 93% error rate.⁷ In total, 40,000 Michiganders were wrongly accused of committing fraud.⁸ For context, MiDAS was directly responsible for adjudicating more cases of fraud in two years than the UIA had ever had to process in either of the preceding two decades.⁹ Notably, the state was aware of what the program was

KQYH]; Press Release, Mich. Dep’t of Lab. & Econ. Opportunity, New, Modern Computer System Coming to UIA with Deloitte Contract Signing (Apr. 28, 2023), <https://www.michigan.gov/leo/news/2023/04/28/new-modern-computer-system-coming-to-uia-with-deloitte-contract-signing> [https://perma.cc/WS8A-UTSA] (“[Deloitte] supports the unemployment insurance systems in 15 states, including California, Florida and Massachusetts.”).

3. Steve Gray & Casey Farrington, *Opinion: Undoing the Harm of MiDAS’ Fraud Designations*, DETROIT NEWS (Oct. 16, 2018, 10:52 PM ET), <https://www.detroitnews.com/story/opinion/2018/10/16/opinion-undoing-harm-midas-fraud-designations/1649803002/> [https://perma.cc/QJ25-YTGN].

4. *Id.*

5. Robert N. Charette, *Michigan’s MiDAS Unemployment System: Algorithm Alchemy Created Lead, Not Gold*, IEEE SPECTRUM (Jan. 24, 2018), <https://spectrum.ieee.org/michigans-midas-unemployment-system-algorithm-alchemy-that-created-lead-not-gold> [https://perma.cc/B8NH-Z7SG].

6. Gray & Farrington, *supra* note 3.

7. Johnathon Oosting, *Michigan Settles Federal Unemployment Fraud Case*, DETROIT NEWS (Feb. 2, 2017, 11:05 AM ET), <https://www.detroitnews.com/story/news/local/michigan/2017/02/02/michigan-settles-federal-unemployment-fraud-case/97395906/> [https://perma.cc/ZA3E-U9JN]; Ryan Felton, *Michigan Unemployment Agency Made 20,000 False Fraud Accusations - Report*, GUARDIAN (Dec. 18, 2016, 6:00 AM ET), <https://www.theguardian.com/us-news/2016/dec/18/michigan-unemployment-agency-fraud-accusations> [https://perma.cc/5AEE-MJX7].

8. Gray & Farrington, *supra* note 3.

9. OFFICE OF UNEMPLOYMENT INSURANCE, DATA DOWNLOADS – DATA MAPS 25, https://oui.doleta.gov/dmstree/handbooks/402/402_4/4024c6/4024c6.pdf [https://perma.cc/6WSU-JEKD] (last visited Mar. 29, 2024).

doing, but it did not do anything to stop it.¹⁰ The third-party vendor who created the system claimed it was working how the state intended – “It was only when it got to be a big enough issue in the papers that people came to us and said, ‘I guess maybe you should turn it off now.’”¹¹

Once labeled a fraud, the law at that time required claimants to pay back all the unemployment benefits they received after losing their job plus a 400% penalty – not to mention that the state charges interest to the claimant for the overpayment.¹² In contrast, the state does not add interest to the UIA’s delayed payments to UI claimants. The 400% penalty is by far the highest in the nation.¹³ For context, if a claimant received \$10,000 in unemployment insurance benefits and then this system improperly alleged fraud, the system would send a bill for all \$10,000 plus a \$40,000 penalty plus interest. One of my prior clients—a disabled veteran who collected only \$8,946 in benefits— was charged an additional \$43,846 in penalties for a total repayment of over \$50,000 that continued to grow each month with interest. Many false fraud victims were forced to pay several thousand dollars, including some of my prior clients who confronted bills as high as \$100,000.

The system issued determinations for claims from as far back as the beginning of the Great Recession in 2007.¹⁴ When the UIA’s computer system incorrectly alleged fraud, many claimants had not had any relationship with the UIA for six or more years. The UIA issued these faulty fraud decisions to out-of-date addresses, so many claimants never received them.¹⁵ Nonetheless, if a claimant did not appeal the UIA’s incorrect decision within 30 days—even if the claimant never received the decision to begin with—the UIA still to this day considers the incorrect

10. Alejandro De La Garza, *States’ Automated Systems Are Trapping Citizens in Bureaucratic Nightmares with Their Lives on the Line*, TIME MAGAZINE (May 28, 2020, 2:24 PM EDT), <https://time.com/5840609/algorithm-unemployment/> [https://perma.cc/SUJ9-QJF8].

11. *Id.*

12. Paul Egan, ‘No Remedy’ for Unemployed Falsely Accused by Michigan’s Fraud System, DETROIT FREE PRESS (Jan. 9, 2017, 11:02 PM ET), <https://www.freep.com/story/news/local/michigan/2017/01/09/unemployment-insurance-claims-fraud/96338462/> [https://perma.cc/EY7C-5X25].

13. Johnathon Oosting, *Director: Revise ‘Harsh’ Unemployment Fraud Penalties*, DETROIT NEWS (Jan. 27, 2017, 5:28 PM ET), <https://www.detroitnews.com/story/news/local/michigan/2017/01/27/director-revise-harsh-unemployment-fraud-penalties/97157800/> [https://perma.cc/LLY2-FHQT]. Importantly, as a result of the False Fraud Scandal, the Michigan Legislature responded to reduce the penalties from 400% to 100%—still among the highest in the nation. See COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS, U.S. DEP’T LABOR 6-4 to 6-8 (2023), <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2023/complete.pdf> [https://perma.cc/AGY9-MAZN].

14. Oosting, *supra* note 13.

15. *Id.*

fraud decision “final.”¹⁶ This means the merits of the case cannot be heard.¹⁷

The UIA has apologized for falsely accusing claimants of fraud.¹⁸ It has even settled multiple lawsuits about these claims.¹⁹ But despite its apologies, the UIA continues to pursue the claimants with “final” determinations for their “debts.” These wrongly-accused claimants then have had their wages and tax returns garnished by the UIA to pay off the penalties, with some still being garnished to this day if they were not able to timely protest the improperly issued determination.²⁰ Other claimants have had subsequent unemployment insurance benefits seized to pay down the debt.²¹ These penalties have impacted other claimants in even greater ways; many filed for bankruptcy, and several others still fail credit checks or have lost their homes due to the fallout.²²

In sum, Michigan’s programming errors caused the Agency to issue tens of thousands of false fraud accusations in two years, but the programming itself has also further decreased claimants’ reciprocity of UI benefits. Across the country, hundreds of thousands have been caught up by “modernized” systems’ over-calibrated “flags.” During the onslaught of claims caused by the COVID-19 pandemic, the difficulties people had with trying to obtain benefits provided a magnifying glass to MiDAS’s faulty programming for all claims. This computer system is to this day still causing significant issues for the state’s general administration of benefit claims – so much so that Michigan is abandoning its more than \$45 million investment for a completely new program for another estimated \$78 million just one decade later.²³ Another indicator that MiDAS touch was never golden.

16. MICH. COMP. LAWS § 421.32(a) (2024); *Protests and Appeals*, MICH. DEP’T LAB. & ECON. OPPORTUNITY, <https://www.michigan.gov/leo/bureaus-agencies/uia/tools/publications/protest-and-appeal-process> [https://perma.cc/5B7U-5D6R] (last visited Mar. 29, 2024).

17. Notably, claimant advocates have developed many arguments to get these cases reopened. However, the UI is generally a pro se system and most people cannot hire an attorney to help them fight the UIA when the reason they have any issue with the UIA is because they lost their job.

18. See Oosting, *supra* note 13.

19. See *Bauserman v. Unemployment Ins. Agency*, 983 N.W.2d 855 (Mich. 2022); *Zynda v. Arwood*, 175 F.Supp.3d 791 (E.D. Mich. 2016).

20. Ryan Calo & Danielle Keats Citron, *The Automated Administrative State: A Crisis of Legitimacy*, 70 EMORY L.J. 797, 827–29 (2021).

21. *Id.*

22. Robert N. Charette, *supra* note 5.

23. Jonathan Oosting, *Michiganders Falsely Accused of Jobless Fraud to Share in \$20M Settlement*, BRIDGE MICH. (Jan. 30, 2024), <https://www.bridgemi.com/michigan-government/michiganders-falsely-accused-jobless-fraud-share-20m-settlement> [https://perma.cc/FN6D-LP57].

Troublingly, the third-party coding has gone unchecked by the public, the state, or the legislature since its implementation in 2013 – and this is generally an issue across the country for third-party companies creating platforms for state benefit programs.²⁴ Despite the scrutiny that followed, claimant advocates across the country continue to see thousands of claimants wrongly disqualified by computer programming issues.²⁵ And what is worse, MiDAS provided the foundation for commercial programming for states around the country to purchase and use as one of the first modernized systems.²⁶ While Michigan’s problematic system was one of the first, a majority of the states across the country have contracted with third parties that perform similar “flagging” systems.²⁷ However, the United States Department of Labor has issued guidance that prevents states from using these systems to automatically make determinations without human review.²⁸

There is often a fear of fraud in any public benefit program, and it was due to this fear that Michigan created MiDAS. And that same fear exists in every state program. But prioritizing fraud prevention has done something much worse – it prevents eligible claimants from obtaining benefits and can even go as far as determining fraud and debts baselessly. And the result? Claimants’ funds are improperly seized to grow state coffers.

24. Gray & Farrington, *supra* note 3.

25. CENTURY FOUND., *supra* note 1; Forberger, *supra* note 1.

26. *Id.* Though it is important to note that states have their own UI rules and any third-party company would need to update their coding to account for them.

27. *Id.*

28. Letter from Brent Parton, U.S. Dep’t Lab., Unemployment Insurance Program Letter No. 01-24 (Nov. 8, 2023), <https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2024/UIPL%2001-24/UIPL%2001-24%20%28Accessible%20PDF%29.pdf> [<https://perma.cc/VRF8-TURR>].