

## PART 14: EMPLOYMENT SECURITY HEARINGS AND APPEALS

### SUBPART A. GENERAL PROVISIONS

#### **R 792.11401 Scope.**

Rule 1401. The rules in this part govern proceedings before administrative law judges and the Michigan compensation appellate commission under the Michigan employment security act, 1936 PA 1, MCL 421.1 to 421.75.

History: 2015 AACCS.

#### **R 792.11402 Definitions.**

Rule 1402. (1) As used in these rules:

(a)"Act" as used in this part means the Michigan employment security act, 1936 PA 1, MCL 421.1 to 421.75.

(b)"Agency" means the unemployment insurance agency as created in Executive Reorganization Order No. 2003-1, MCL 445.2011.

(c)"Agent office" means an unemployment insurance office outside the state of Michigan serving as agent of the agency.

(d) "Good cause" includes, but is not limited to, any of the following:

(i) Newly discovered material evidence that, through no fault of the party, had not previously been available to the party.

(ii) A legitimate inability to act sooner.

(iii) A failure to receive a reasonable and timely notice, order, or decision through no fault of the party.

(iv) Untimely delivery of a protest, appeal, or an agency document by a business or governmental agency entrusted with delivery of mail.

(v) Relying on incorrect information from the agency, administrative law judge, the hearing system or the Michigan compensation appellate commission.

(e)"Michigan compensation appellate commission" means the commission created by Executive Order 2011-6 to hear appeals under 1936 PA 1, MCL 421.1 to 421.75.

(f) Unless the context otherwise requires, the word "party" means the agency, the employing unit, and the claimant, and includes an agent or attorney of the agency, the employing unit, or the claimant.

History: 2015 AACCS.

#### **R 792.11403 Adjournments; taking testimony of witness unable to appear and testify at scheduled hearing; deposition.**

Rule 1403. (1) Adjournments of hearings may be granted by the administrative law judge or the Michigan compensation appellate commission panel before whom the appeal is pending. Adjourned hearings shall be rescheduled to a time and place that the administrative law judge or

the Michigan compensation appellate commission deems most convenient for all interested parties.

(2) The administrative law judge or the Michigan compensation appellate commission panel may schedule an adjourned hearing at a place convenient to the residence of a witness to take his or her testimony, if he or she is unable to appear and testify at a regularly scheduled hearing.

(3) The testimony may be taken by any administrative law judge of this state or of any agent state, or may be taken by deposition pursuant to the provisions of law applicable to depositions in civil actions pending in the circuit courts of this state.

History: 2015 AACCS.

**R 792.11404 Witness fee vouchers; processing.**

Rule 1404. At the conclusion of a hearing by the administrative law judge or the Michigan compensation appellate commission, the agency shall process witness fee vouchers for payment for those witnesses who satisfy all of the following conditions:

- (a) Were duly subpoenaed.
- (b) Appeared in person at the hearing.
- (c) Verified their mileage and proper mailing addresses.

History: 2015 AACCS.

## **SUBPART B. APPEALS TO ADMINISTRATIVE LAW JUDGES**

### **R 792.11405 Appeal; form.**

Rule 1405. (1) An appeal to an administrative law judge shall be filed pursuant to 1936 PA 1, MCL 421.1 to 421.75.

(2) Appeal forms for administrative law judge hearings and rehearings shall be available at all agency offices.

History: 2015 AACS.

### **R 792.11406 Appeal; deadline; statements on redetermination; procedure on appeal of denial of redetermination.**

Rule 1406. (1) An appeal to an administrative law judge shall be received by the principal office of the agency, or by any other office of the agency, or by any agent office of the agency outside the state of Michigan, within 30 days after the date of mailing or personal service of the agency's redetermination.

(2) A party who receives a denial of redetermination because his or her request for review was not filed with the agency within 30 days after the date of mailing or personal service of the underlying determination or redetermination may appeal the denial of redetermination to an administrative law judge. The administrative law judge shall take evidence on whether there was good cause for issuing a redetermination. If the administrative law judge finds good cause, the administrative law judge shall inform the parties of that fact and shall then proceed to take testimony on, and decide, the underlying issue or issues, pursuant to R 792.11424.

History: 2015 AACS.

### **R 792.11407 Notice of hearing.**

Rule 1407. (1) Except as required by subrule (3) of this rule, notice of the time and place of the initial hearing before an administrative law judge, and a short and plain statement of the issues involved, shall be served upon the parties not less than 10 days before the date of the hearing.

(2) When an administrative law judge adjourns or continues a hearing for which notice has been given, notice to the parties of the new hearing date may be given orally if the new hearing date is within 7 days of the old hearing date. Otherwise, the new notice shall be served at least 7 days before the date of the new hearing.

(3) When a hearing involves employer or claimant fraud under section 54, 54a, 54b, 54c, or 62(b), (c), or (d) of the act, MCL 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), the notice of hearing shall be served upon the parties not less than 20 days before the date of the hearing.

History: 2015 AACS.

**R 792.11408 Employer or claimant fraud; hearing procedure.**

Rule 1408. (1) When a hearing involves allegations of employer or claimant fraud under section 54, 54a, 54b, 54c, or 62 (b), (c), or (d) of the act, 1936 PA 1, MCL 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), the notice of hearing shall be mailed to, or personally served upon, the parties at least 20 days before the hearing.

(2) Where one party, including the agency, has documentary evidence or witnesses concerning another party's alleged fraud, the party shall provide a witness list and copies of the documentary evidence to the other parties and to the administrative law judge not less than 10 days before a fraud hearing.

History: 2015 AACCS.

**R 792.11409 Subpoenas.**

Rule 1409. (1) A party may request subpoenas to compel witnesses to testify at an administrative law judge hearing or to compel persons to produce books, records, and papers at an administrative law judge hearing.

(2) Requests for subpoenas shall be made to an administrative law judge.

(3) The subpoenas shall be issued promptly, unless the administrative law judge decides that the request is unreasonable.

(4) A party denied a subpoena may apply to the Michigan compensation appellate commission for issuance of the subpoena, and the proceedings before the administrative law judge shall be stayed until the Michigan compensation appellate commission decides whether the subpoena should be issued.

History: 2015 AACCS.

**R 792.11410 Readiness of parties after notice of hearing; adjournment; issues before an administrative law judge.**

Rule 1410. (1) A party appearing at a hearing before an administrative law judge after notice shall have his or her evidence and witnesses present and be ready to proceed on the statement of the issues contained in the notice of hearing.

(2) If an issue or time period beyond that specified in the determination or redetermination is raised at administrative law judge hearing without having been included in the notice of hearing, the hearing shall be adjourned for a reasonable time if requested by either party or if the administrative law judge deems adjournment appropriate. Evidence shall not be taken on the issue or time period that is not included in the notice of hearing, and a decision shall not be issued on such an issue or time period, unless a knowing and informed waiver of notice or adjournment is obtained from the parties. The purpose of the adjournment is to give the parties the opportunity to prepare to meet the newly identified issue.

(3) To secure a knowing and informed waiver on the record, an administrative law judge shall do all of the following:

(a) Advise the parties that an issue or issues or a period of time not specified in the hearing notice has been or is about to be raised.

(b) Advise the parties of the nature of such issue and the consequences of his or her ruling on such issue.

(c) Advise the parties of the right to request an adjournment or stipulate to continue with the hearing.

(4) With regard to that part of an administrative law judge decision which rules on an issue or a period of time not specified in the notice of hearing and where a waiver of adjournment has not been obtained, as required under subrules (2) and (3) of this rule, the Michigan compensation appellate commission may remand, set aside, modify, reverse, or affirm on appeal.

(5) If the agency, a party, or the administrative law judge discovers new, additional, or corrected information or administrative clerical error before or during the course of a hearing, which could affect the agency's position on a case, the administrative law judge may return the matter to the agency for reconsideration or redetermination.

History: 2015 AACCS.

### **R 792.11411 Conduct of hearing.**

Rule 1411. (1) The administrative law judge shall conduct and control the hearing to develop the rights of the parties.

(2) At the beginning of the hearing, the administrative law judge shall identify all parties, representatives, and witnesses present and shall outline briefly the issues involved.

(3) Oral evidence at a hearing before an administrative law judge shall be taken only on oath or affirmation.

(4) Each party shall have all of the following rights:

(a) To call and examine witnesses.

(b) To introduce exhibits.

(c) To cross-examine opposing witnesses on any matter relevant to the issues, even though that matter was not covered in the direct examination.

(d) To impeach any witness, regardless of which party first called the witness to testify.

(e) To rebut the evidence against him or her.

(5) A party may be called and examined as if under cross-examination.

(6) Oral arguments may be presented at the conclusion of the hearing.

(7) The administrative law judge may allow a reasonable time after conclusion of the hearing for the filing of written argument.

(8) To secure the competent relevant and material evidence necessary to arrive at a fair decision, an administrative law judge may do any of the following:

(a) Adjourn the hearing.

(b) Direct the parties to present required evidence.

(c) Cause subpoenas to be issued.

(d) Examine any party or witness.

(9) If the claimant or employer is represented by legal counsel or an authorized agent, the administrative law judge shall allow legal counsel or the authorized agent to first conduct the direct examination of his or her witness before the administrative law judge further examines any party or witness.

(10) When an interested party is not represented by legal counsel or an authorized agent, the administrative law judge before whom the hearing is taking place shall advise the party of his or her rights, aid him or her in examining and cross-examining witnesses, and give every assistance to the party compatible with an impartial discharge of the administrative law judge's official duties.

History: 2015 AACCS.

**R 792.11412 Hearing location; telephone hearing.**

Rule 1412. (1) Hearings held to resolve disputes of determinations made under sections 13 to 25 and sections 54, 54a, 54b, 54c or 62(b), (c), or (d) of the act, MCL 421.13 to 421.25, MCL 421.54, 421.54a, 421.54b, 421.54c or 421.62(b), (c), or (d), shall be scheduled as in-person hearings at a location determined by the hearing system. At the discretion of the administrative law judge, the testimony of parties or witnesses may be taken by telephone or video.

(2) With the exception of a hearing scheduled under subrule (1) of this rule, all hearings held before an administrative law judge shall be conducted by telephone, unless otherwise directed by the executive director of the Michigan administrative hearing system or his or her designee or designees.

(3) A party to the hearing shall submit any documents he or she intends to introduce at the hearing to the other parties and to the administrative law judge in time to ensure the documents are received before the date of the scheduled hearing. All documents submitted to the administrative law judge shall be identified on the record. The documents shall not be considered evidence on the record unless offered and admitted during the course of the hearing.

(4) If a hearing is conducted by telephone, the administrative law judge shall, on the record, make inquiries that the administrative law judge considers appropriate to ascertain the identity of the individuals participating by telephone. Absent approval of the executive director of the Michigan administrative hearing system or his or her designee, an administrative law judge shall not require a party to submit an affidavit to attest to his or her identity.

History: 2015 AACCS.

**R 792.11413 Further hearing prior to decision.**

Rule 1413. (1) At any time between the hearing and the issuance of the administrative law judge's decision, the administrative law judge may direct a further hearing on his or her own initiative or the motion of a party.

(2) A further hearing is within the discretion of the administrative law judge.

History: 2015 AACCS.

**R 792.11414 Rehearing of administrative law judge's decision.**

Rule 1414. (1) A request for a rehearing of an administrative law judge's previous decision shall be received by the administrative law judge or by an office or agent office of the agency

within 30 days after the date of mailing of the decision. A party requesting rehearing must serve their request on the opposing party.

(2) Reasons for requesting a rehearing include, but are not limited to, good cause for not appearing at a hearing or the discovery of material evidence after the date of the hearing.

(3) A rehearing may also be granted on the administrative law judge's own motion.

(4) Granting a rehearing is within the discretion of the administrative law judge. An order or decision allowing rehearing shall state the reasons for granting the rehearing.

(5) If a timely request for rehearing is denied, both the denial and the administrative law judge's previous decision may be appealed to the Michigan compensation appellate commission.

(6) A rehearing request received more than 30 days after the decision is mailed shall be treated as a request for reopening under R 792.11416.

History: 2015 AACCS.

### **R 792.11415 Reopening and review of administrative law judge's decision.**

Rule 1415. (1) A request for reopening and review of an administrative law judge's decision shall be received by the administrative law judge or by an office or agent office of the agency within 1 year after the date of mailing of the decision. A party requesting reopening shall serve his or her request on the opposing party.

(2) The administrative law judge may reopen and review a matter on his or her own initiative, within 1 year after the date of mailing of the previous decision, after providing notice to the interested parties.

(3) A reopening may be granted on the administrative law judge's own motion if the review is initiated by the administrative law judge, with notice to the interested parties, within 1 year after the date of mailing of the previous decision.

(4) Granting reopening is within the discretion of the administrative law judge. If reopening is granted, the administrative law judge shall decide the underlying issues of the case based on the evidence already submitted and any additional evidence the administrative law judge may enter into the record.

(5) If the administrative law judge denies a request for reopening, the Michigan compensation appellate commission shall not review the administrative law judge's previous decision unless it first decides that there was good cause for a reopening.

History: 2015 AACCS.

### **R 792.11416 Notice of rights of appeal.**

Rule 1416. Each decision or final order issued by an administrative law judge shall notify the parties of all of the following:

(a) A party has the right to have a decision or a denial of a motion for rehearing or reopening reviewed by the Michigan compensation appellate commission by making a timely appeal. The appealing party shall serve a copy of his or her appeal on the opposing party.

(b) A party may make a timely request to the Michigan compensation appellate commission for an oral argument or to present additional evidence in connection with his or her appeal.

(c) Absent oral argument before it, the Michigan compensation appellate commission shall consider a party's written argument to the commission only if all parties are represented or by agreement of the parties.

(d) A party may appeal a decision or final order of an administrative law judge directly to a circuit court if the claimant and the employer or their respective authorized agents or attorneys sign a written stipulation and file it with the administrative law judge in a timely manner.

(e) A party may make a timely request to an administrative law judge to rehear a previous decision.

(f) A party may make a timely request to an administrative law judge, for good cause only, to reopen and review a previous decision.

History: 2015 AACCS.