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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

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Unemployment Insurance Appeals Commission

## **Notice of Designation of Your Case as a Full Commission Case**

This is to notify you that your case has been designated by the Unemployment Insurance Appeals Commission (Commission) as a Full Commission Case. This case is designated as such because it involves important issues with broad implications for future cases. Specifically, the Commission has defined the issues as follows:

Whether regular unemployment insurance benefits, pandemic unemployment assistance (PUA) and Supplemental Security Insurance (SSI) benefits are “social welfare benefits” for the purposes of calculating household income on an application for a waiver of restitution for financial hardship under Section 62(a) of the Michigan Employment Security Act. There is also an issue in one case as to whether unemployment benefits for which the Agency is seeking repayment from the claimant can be considered household income.

Two other cases involving this issue have also been identified as Full Commission cases and are identified in the attached Case Summaries. They will be heard and decided along with your case.

### **Impact**

Designation of the case as a Full Commission Case is important because the Commission’s decision can inform how future cases on this issue may be handled. Your case will be reviewed and decided by the entire seven-member Commission. Additionally, the Commission’s decision will be posted on the Commission’s website and included in the Digest of Commission Decisions. This allows administrative law judges and courts to rely on the reasoning in that decision in making decisions on other cases, if they choose to do so.

**Please see an important notice below regarding Your Privacy Rights.**

### **Notice of Designation**

The Notice of Designation includes this Notice, Case Summaries and citations to other legal authority under consideration, the three administrative law judges’ decisions, with all party identifiers redacted, and orders for oral and written argument and additional evidence. All of these documents are attached hereto.

Due to the potential impact of your case, the Commission will post this Notice and attachments to its website and send an alert by email to members of the Michigan unemployment insurance appeals community via its listserv. Public interest groups or members of the claimant and/or employer community may have insight or authority that the Commission should consider in making its decision. The Commission is authorized to accept briefs from non-parties (amicus briefs) on cases

before it. Accordingly, providing notice of your case in this manner affords these groups an opportunity to submit an amicus brief and provide valuable input on this matter.

### **Your Privacy Rights**

The Employment Security Act protects the privacy of parties to unemployment insurance benefit claims. Information that is disclosed in the claims process is “confidential” and the Commission may not disclose it without your permission.

**To protect your privacy, your name and identifiers will be redacted from the website and the listserv email and will not be disclosed to the public unless you agree to disclosure.**

### **Release**

You may choose to have your name associated with this case. This would allow your case to be referred to by name in the manner typically associated with court cases. The Michigan Supreme Court case, *Carter v Employment Security Commission*, 364 Mich 649 (1960), is an example of an important case that is frequently cited in unemployment cases. If you choose not to release your name, your case will be referred to and cited by case number only.

A Release that would permit the Commission to disclose your name is attached. Please note that this Release does not authorize the Commission to disclose identifiers such as your address, or social security or employer identification numbers. That information will *not* be disclosed to the public. Signing the Release is completely optional. You may decide to Release your name because of the importance of the case, but the Release is not required.

### **Oral and Written Argument, Additional Evidence, and Amicus Briefs**

The full Commission has determined that oral and written argument, as well as the admission of additional evidence, would assist in its deliberations and has thus issued orders for oral and written argument and additional evidence under Section 34(2) of the Michigan Employment Security Act, and Mich Admin Code, Rules 792.11420(4), 792.11422(2), and 792.11423(4)(c).

The Commission invites the submission of amicus briefs from persons or organizations that are not parties to the matter before the Commission under Rule 792.11423(8).

### **Legal Help**

**If you are not represented, you may decide to seek legal help with your case before the Commission.** A list of attorney and non-attorney representatives who represent parties in cases at this Commission is attached. (See document titled, “If you need Help with your Appeal.”) Some of the representatives do not charge for their services. Please review the information in the list carefully. If you plan to obtain assistance, please contact a representative as soon as possible so that his or her appearance can be placed on the record within sufficient time to meet the schedule for oral and written argument.

**Summary of Full Commission Cases  
UIAC Docket Nos. 22-003551, 22-003623, and 22-003931**

The claimant in each of these cases requested a financial hardship waiver for restitution of overpayment of benefits. Under Section 62(a)(ii) of the Michigan Employment Security Act (Act), the test for determining whether a claimant is entitled to a waiver includes a comparison of the claimant's net household income and household cash assets to the annual poverty guidelines published in the Federal Register. Under the test, "social welfare benefits" must be excluded from household income and cash assets.

The questions for consideration by the Commission include:

Are any of the following "social welfare benefits" for purposes of the household income calculation in Section 62(a)(ii): (1) regular unemployment insurance benefits, (2) pandemic unemployment assistance benefits (PUA), (3) Supplemental Security Income (SSI) benefits?

Can unemployment benefits that are included in the overpayment amount and for which the Agency is seeking repayment, be considered "household income" for purposes of Section 62(a)(ii)?

**Statutory Authority**

**MCL 421.2 Declaration of public policy; findings.**

- (1) The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his or her family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.

**MCL 421.62 Recovery of improperly paid benefits.**

- (a) If the unemployment agency determines that an individual has obtained benefits to which the individual is not entitled, or a subsequent determination by the agency or a decision of an appellate authority reverses a prior qualification for benefits, the agency may recover a sum equal to the amount received plus interest... Except in a case of an intentional false statement,

misrepresentation, or concealment of material information, the unemployment agency shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience and shall waive any interest....As used in this subsection, “contrary to equity and good conscience” means any of the following:

\* \* \*

- (ii) **The claimant’s average net household income and household cash assets, exclusive of social welfare benefits**, were, during the 6 months immediately preceding the date of the application for waiver, at or below 150% of the annual update of the poverty guidelines most recently published in the Federal Register by the United States Department of Health and Human Services under the authority of 42 USC 9902(2), and the claimant has applied for a waiver under this subsection. [Emphasis added.]