



UIAC Docket # 22-003551

Docket No.: [REDACTED]

Case No.: [REDACTED]

Employer: [REDACTED]

Claimant: [REDACTED]

SSN: XXX-XX-[REDACTED]

This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

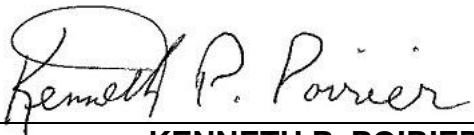
这是一份重要的法律文件。请让别人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheti dokumentin.

ORDER

The June 15, 2022 redetermination is reversed. The claimant is entitled to a waiver of benefits under the financial hardship requirements of Section 62 (a) (ii) of the Michigan Employment Security Act (Act).

Decision Date: August 23, 2022


KENNETH P. POIRIER
ADMINISTRATIVE LAW JUDGE

PARTICIPANTS

		08-22-22			
		Sworn		Sworn	Sworn
Claimant	[REDACTED]	X	X		
Representative	[REDACTED]	X			
Witness					
Witness					
Witness					
UIA Rep	[REDACTED]	X	X		
Employer					
Representative					
Witness					
Witness					
Witness					
Witness					
Witness					
Witness					
Witness					

EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			

[REDACTED]

JURISDICTION

On June 17, 2022, the claimant timely appealed a June 15, 2022 Unemployment Insurance Agency (Agency) redetermination. The redetermination denied the claimant's request for a waiver of restitution under Section 62 (a) of the Act.

ISSUE

Is waiver of restitution allowed?

APPLICABLE LAW

Section 62(a) of the Act provides:

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 pursuant to section 15(a) by 1 or more of the following methods: deduction from benefits or wages payable to the individual, payment by the individual in cash, or deduction from a tax refund payable to the individual as provided under section 30a of 1941 PA 122, MCL 205.30a. Deduction from benefits or wages payable to the individual is limited to not more than 50% of each payment due the claimant. The unemployment agency shall issue a determination requiring restitution within 3 years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement. Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall not initiate administrative or court action to recover improperly paid benefits from an individual more than 3 years after the date that the last determination, redetermination, or decision establishing restitution is final. Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall issue a restitution determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose, or in the case of an issue of intentional false statement, misrepresentation, or concealment of material information in violation of section 54(a) or (b) or sections 54a to 54c, within 3 years after the receipt of the improperly paid benefits unless the unemployment agency filed a civil action in a court within the 3-year period; the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits; or the unemployment agency issued a determination requiring restitution within the 3-year period. The time limits in this section do not prohibit the unemployment agency from pursuing collection methods to recover the amounts found to have been improperly paid. 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. If the agency or an appellate authority waives collection of restitution and interest, except as provided in subdivision (ii), the waiver is prospective and does not apply to restitution and interest payments already made by the individual. As used in this subsection, "contrary to equity and good conscience" means any of the following:

(i) The claimant provided incorrect wage information without the intent to misrepresent, and the employer provided either no wage information upon request or provided inaccurate wage information that resulted in the overpayment.

(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. The unemployment agency shall not consider a new application for a waiver from a claimant within 6 months after receiving an application for a waiver from the claimant. A waiver granted under the conditions described in this subdivision applies from the date the application is filed. If the waiver is granted, the unemployment agency shall promptly refund any restitution or interest payments made by the individual after the date of the application for waiver. As used in this subdivision:

(A) "Cash assets" means cash on hand and funds in a checking or savings account.

(B) "Dependent" means that term as defined in section 27(b)(4).

(C) "Household" means a claimant and the claimant's dependents.

(iii) The improper payments resulted from an administrative or clerical error by the unemployment agency. A requirement to repay benefits as the result of a change in judgment at any level of administrative adjudication or court decision concerning the facts or application of law to a claim adjudication is not an administrative or clerical error for purposes of this subdivision.

In determining whether or not to grant a request for a waiver of restitution due to financial hardship, Section 62 (a) of the Act requires the Agency to consider whether 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 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 whether the claimant has applied for a waiver under Section 62 (a) (ii) of the Act. Such a waiver is effective from the date on which the application for the waiver is filed. The 2021 poverty guidelines for the 48 contiguous states and the District of Columbia show the following information, representing annual income:

PERSONS IN FAMILY/HOUSEHOLD	POVERTY GUIDELINE
1	\$12,880
2	17,420
3	21,960
4	26,500
5	31,040
6	35,580
7	40,120
8	44,660

For families/households with more than 8 persons, add \$4540 for each additional person.

Source: Federal Register, 86 FR 7732, Document Number 2021-01969

FINDINGS OF FACT

The claimant filed a claim for unemployment benefits on April 17, 2020. The Agency approved his claim on a monetary basis on April 20, 2020. On June 19, 2020, the Agency issued a determination holding that the claimant was not disqualified for benefits under the misconduct provision of Section 29 (1) (b) of the Act. On July 21, 2021, the Agency issued a redetermination stating that the claimant was disqualified for benefits under the [REDACTED] of the Act. The Agency never received an appeal from the claimant concerning the July 21, 2021 disqualification. On July 21, 2021, the Agency also issued a notice that the claimant had been overpaid benefits from June 20, 2020, through July 20, 2021.

The claimant requested a waiver of restitution on September 16, 2021. In his waiver request, the claimant reported that he was not legally married, that he had no dependents, that he had nothing his checking account, and that he had five dollars in his savings account. During the six months extending from March 2021 through August 2021, the claimant's only income consisted of \$2648.00 per month in unemployment benefits. The Agency declined the claimant's waiver request because of its position that his unemployment benefits constituted income, and that his income exceeded the poverty guidelines used to determine whether to grant a restitution waiver.

REASONING AND CONCLUSIONS OF LAW

The Agency's representative noted that the claimant had received a payment of unemployment benefits during the time in question. However, Section 62 (a) (ii) of the [REDACTED]

Act specifically excludes social welfare benefits from the calculation used to determine a claimant's entitlement to a waiver of restitution.

Section 2 (1) of the Act declares the public policy that prompted the enactment of the Michigan Employment Security Act. That declaration states that involuntary unemployment harms unemployed workers and their families, "to the detriment of the welfare of the people of the state." It goes on to note that accumulating funds during periods of employment to help "persons unemployed through no fault of their own... is for the public good, and the general welfare of the people of the state." Given this statement, it is concluded that unemployment benefits are social welfare benefits. The claimant's unemployment benefits therefore will not be considered in the calculation for determining entitlement to a restitution waiver in this matter.

Without his unemployment benefits, the claimant had no income in the 6 months before he submitted his waiver request. Based on the record in this matter, it is concluded that 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 to be considered in deciding whether to waive restitution. The claimant therefore is entitled to a waiver of benefits under the financial hardship requirements of Section 62 (a) (ii) of the Act. The June 15, 2022 redetermination is reversed.

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Unemployment Insurance Appeals Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

September 22, 2022

If you elect to file an appeal with the Unemployment Insurance Appeals Commission, your appeal should be filed within the deadline set forth in my decision/order. **Your appeal may be submitted to the Commission by US mail or fax. Additionally, you may file an appeal electronically by completing a fillable form on the Commission's website.** The website address is <https://www.michigan.gov/uiac> and that website includes instructions on how to file the appeal. Do not use your MiWAM account through the Unemployment Insurance Agency's online system to file an appeal to the Commission.

I, D. Pitcher, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

English

IMPORTANT! This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

IMMEDIATELY: If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

Arabic

أ. "هام! يحتوي هذا المستند (المستندات) على معلومات هامة عن حقوقك الخاصة بعروضات البطالة، ومسؤولياتك وألوان مخصصاتك، وألوان من المهم جدًا أن تفهم البيانات الواردة في هذا المستند.
على الفور: إذا كنت بحاجة إلى مساعدة اتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقيتها."

Bengali

“গুরুত্বপূর্ণ! এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে গুরুত্বপূর্ণ সূচনা দেওয়া আছে। এটা গুরুত্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নবেন।
অবিলম্বে: আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।”

Spanish

¡IMPORTANTE! Este documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento.

INMEDIATAMENTE: Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 1-866-500-0017.

Mandarin

重要提示! 这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即: 如果需要, 请拨打1-866-500-0017, 可获得帮助, 以利您翻译和理解所收到的文件中的信息。

Albanian

1. **“E RËNDËSISHME!** Ky dokument (dokumente) përmban informacion të rëndësishëm mbi të drejtat, përgjegjësitë dhe/ose përfitimet tuaja nga kompensimi i papunësisë. Është shumë e rëndësishme që ta kuptoni informacionin në këtë dokument.
2. **MENJËHERË:**Nëse është e nevojshme, telefononi në numrin 1-866-500-0017 për t’ju ndihmuar me përkthimin dhe kuptimin e informacionit të dokumentin (dokumenteve) që keni marrë.”

REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Unemployment Insurance Appeals Commission (Commission). A request for rehearing must be signed by the requesting party or their agent and RECEIVED by the Michigan Office of Administrative Hearings and Rules (MOAHR) at **3026 West Grand Boulevard, 2nd Floor Annex, Ste 2-700, Detroit, MI 48202** by fax, 517-763-0135; or by Email at **MOAHR-UA-Detroit@michigan.gov**, or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MOAHR, and an appeal to the Commission is not submitted, the hearing decision becomes final.

APPEAL TO THE UNEMPLOYMENT INSURANCE APPEALS COMMISSION

The Unemployment Insurance Appeals Commission (Commission) consists of up to seven members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (**P.O. Box 30475, Lansing, MI 48909-7975**), facsimile transmission (**517.241.7326**), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738---,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting http://www.michigan.gov/documents/uiia_UC1800_76144_7.pdf.

BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. **The stipulation must be mailed to the Michigan Office of Administrative Hearings and Rules, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202.** Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party filing the appeal.