

STATE OF MICHIGAN  
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[REDACTED]

Appeal Docket No.: [REDACTED] 21-000336

Claimant.

UIA Case No.: [REDACTED]

REMAND ORDER

This matter is before the Unemployment Insurance Appeals Commission (Commission) pursuant to the Unemployment Insurance Agency's (Agency) timely appeal from a November 10, 2021 order denying rehearing by an Administrative Law Judge (ALJ). The Agency requested a rehearing of the ALJ's underlying November 1, 2021 decision which reversed a June 30, 2021 Agency Pandemic Unemployment Assistance (PUA) monetary redetermination that found the claimant ineligible for benefits. The ALJ found the claimant did not fabricate the documents submitted to the Agency.

We will first address the Agency's appeal of the ALJ's order denying rehearing. Under Section 33(1) of the Michigan Employment Security Act (Act), rehearings are granted or denied at the discretion of the ALJ. Mich Admin Code, R 792.11414.

After reviewing the record, the Commission finds that there has not been an abuse of discretion. Therefore, the ALJ's November 10, 2021 order denying rehearing must be affirmed.

Next, we turn to the ALJ's November 1, 2021 decision. The Agency's first ruling on this case was a July 23, 2020 PUA monetary determination that found the claimant eligible for benefits. On June 30, 2021, the Agency issued a monetary redetermination which found the claimant ineligible for PUA. Before we can address the merits of that redetermination, we must first address whether the Agency acted within its jurisdiction when it issued that redetermination. To that end, the ALJ's November 1, 2021 decision must be set aside, and this matter remanded to the ALJ to take evidence from the Agency to determine whether there was good cause to reconsider the July 23, 2020 monetary determination. Our reasons are as follows.

PUA benefits were created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. While the CARES Act is federal legislation, it specifies that the appeal rights and procedures of the unemployment insurance laws<sup>1</sup> in the administrating state control. Accordingly, the appeal and finality provisions of the Act apply to PUA benefit determinations just as they do to regular benefit determinations.

Under Section 32a(1) of the Act, an Agency determination is final unless either (1) an interested party protests the Agency determination within 30 days after the mailing date of the determination, or (2) the Agency reconsiders the determination within the same 30-day period. See also *Roman Cleanser Co v Murphy*, 386 Mich 698, 703-708; 194 NW2d 704 (1972).

After 30 days, the Agency has the authority to reconsider a determination and issue a redetermination, but *only* for good cause, as specified in Section 32a(2):

The unemployment agency shall, **for good cause**, including an administrative clerical error or evidence produced by an interested party showing that a prior determination or redetermination was not sent to the interested party's correct address or an address ascertained under subsection (5), **reconsider a prior determination or redetermination after the 30-day period** has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. **A reconsideration shall not be made unless the request is filed** with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, **within 1 year after the date of mailing or personal service of the original determination on the disputed issue** or, if the original determination involved a finding of fraud, within 3 years after the date of mailing or personal service of the original determination. [Emphasis added.]

Examples of good cause for reconsideration for purposes of Section 32a, are set forth in Mich Admin Code, R 421.270:

- (1) In determining if good cause exists under sections 32a, 33, and 34 of the act, after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not limited to, any of the following situations:
  - (a) If an interested party has newly discovered material facts, which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.
  - (b) If the agency has additional or corrected information.
  - (c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.
  - (d) If an interested party has a legitimate inability to act sooner.
  - (e) If an interested party fails to receive a reasonable and timely notice, order, or decision.
  - (f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.
  - (g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.

In the instant matter, the Agency issued a monetary determination that the claimant was eligible for PUA benefits on July 23, 2020. That determination became final 30 days later. In the June 30, 2021 redetermination, the Agency *asserted* that it had "good cause" to reconsider the determination on grounds that it had received "new, additional or corrected information." If a case proceeds to an ALJ hearing on appeal, the party seeking reconsideration must then go beyond mere

“assertion” and produce evidence sufficient to establish good cause for reconsideration. The Agency appeared at the ALJ hearing but did not offer any evidence on the good cause issue. While the Agency should have been prepared for that issue, we note that Section 32a of the Act was not included in the notice of hearing and the ALJ did not require the Agency to establish good cause.

Accordingly, this matter is remanded to the ALJ for a hearing to take additional evidence on whether the Agency can establish good cause for reconsidering the July 23, 2020 monetary determination. The ALJ shall take evidence as to the “new, additional or corrected information” received by the Agency, **the date it was received**, and any other relevant evidence under Section 32a(2) of the Act and Mich Admin Code, R 421.270, and issue a decision.

*If the ALJ finds the Agency established good cause to reconsider the July 23, 2020 determination, the ALJ shall issue a ruling on the underlying merits, based on the evidence previously received at the October 28, 2021 hearing.*

If the ALJ finds the claimant ineligible for PUA based on the merits, then the ALJ shall take evidence pursuant to Section 32a(3) to decide if the redetermination is applicable to the compensable period. Under Section 32a(3), when the Agency reconsiders a prior determination after the 30-day period, as in this case, the adverse redetermination is not applicable to the period for which benefits were paid *unless* payment was the result of (1) administrative clerical error; (2) false statement; or (3) nondisclosure or misrepresentation of material fact by the claimant:

**If an interested party fails to file a protest within the 30-day period and the unemployment agency for good cause reconsiders a prior determination or redetermination and issues a redetermination, a disqualification, or an ineligibility imposed thereunder, other than an ineligibility imposed due to receipt of retroactive pay, the redetermination, disqualification, or ineligibility does not apply to a compensable period for which benefits were paid or are payable unless the benefits were obtained as a result of an administrative clerical error, a false statement, or a nondisclosure or misrepresentation of a material fact by the claimant.** [Emphasis added.]<sup>2</sup>

In order to make that decision, the ALJ shall gather and consider any relevant evidence. The Agency shall have the burden to establish benefits were obtained as a result of any of the three factors set forth in Section 32a(3).

If, after applying Section 32a(3), the redetermination is deemed applicable to the compensable period, the ALJ must then consider whether a waiver of restitution under Section 62(a)(iii) is required as to the improperly paid benefits.

Section 62(a)(iii) of the Act provides, in relevant part:

- 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 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:

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- (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. [Emphasis added.]

In summary, we find that this matter must be remanded the ALJ to take additional evidence relating to the question of good cause under Section 32a(2). *If the ALJ finds that the Agency had good cause to reconsider the July 23, 2020 determination, the ALJ shall rule on the merits, based on evidence previously received at the October 28, 2021 hearing. The ALJ may also reissue his or her prior decision on the merits, if warranted. Should the ALJ find the claimant ineligible for PUA benefits, the ALJ shall then consider whether the adverse redetermination applies to the compensable period under Section 32a(3).* Should the ALJ find that the adverse redetermination applies to the compensable period, the ALJ shall take evidence to determine if a waiver of restitution under Section 62(a)(iii) of the Act is required.

Therefore,

IT IS ORDERED that the ALJ’s November 1, 2021 decision is SET ASIDE.

IT IS FURTHER ORDERED that this matter is remanded to the ALJ to take evidence as to whether the Agency can establish good cause under Section 32a(2) of the Act and Mich Admin Code, R 421.270, for its issuance of the June 30, 2021 monetary redetermination.

IT IS FURTHER ORDERED that if the ALJ finds the Agency established good cause to reconsider the July 23, 2020 determination, the ALJ shall rule on the merits.

IT IS FURTHER ORDERED that if the ALJ finds the claimant ineligible for PUA benefits, then the ALJ shall take evidence to determine if the redetermination applies to the compensable period in which benefits were paid, pursuant to Section 32a(3).

IT IS FURTHER ORDERED that if the ALJ finds that the redetermination applies to the compensable period, then the ALJ shall determine whether waiver of improperly paid benefits is required under Section 62(a)(iii).

IT IS FURTHER ORDERED that Sections 32a(2), 32a(3) and 62(a)(iii) of the Act shall be included in the Notice of Hearing.

After receiving evidence, the ALJ shall consider the entire record (including the prior hearings), make new findings of fact, and issue a new decision consistent with those findings, addressing these issues.



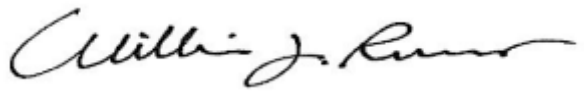
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Lester A. Owczarski, Commissioner



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Neal A. Young, Commissioner



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William J. Runco, Commissioner

DATED AND MAILED AT  
LANSING, MICHIGAN, ON

June 16, 2022