

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

████████████████████

████████████████████

-22-001042

Claimant.

Decided *en banc*

████████████████████

DECISION OF UNEMPLOYMENT INSURANCE APPEALS COMMISSION

This matter is before the Unemployment Insurance Appeals Commission (Commission) pursuant to the Unemployment Insurance Agency's (Agency) timely appeal from a February 17, 2022 decision by an Administrative Law Judge (ALJ). The ALJ's decision set aside a January 25, 2022 Lack of Prosecution order and set aside the Agency's October 18, 2021 redetermination. The decision affirmed a September 9, 2021 redetermination that found the claimant able to establish a claim for benefits.

Issue

The issue in this case is whether this Commission must accord finality to the eligibility determination on claimant's benefit application that was issued by the Agency on May 14, 2020. Resolution of this issue requires application of Section 32a of the Michigan Employment Security Act (Act) which provides that a determination is final unless appealed by an interested party within 30 days after the mailing of the determination. That section also precludes reconsideration of a determination more than one year after the mailing of the original determination.¹

History of the Case

The history of this case is as follows. On May 14, 2020, the Agency issued a Pandemic Unemployment Assistance (PUA) monetary determination (Determination) that the claimant was eligible for PUA benefits. The claimant was paid PUA benefits based on that Determination for a period of at least March 7, 2020 through December 5, 2020.² More than a year later, and apparently acting on its own motion, the Agency issued three redeterminations of that Determination. Specifically, on July 8, 2021, the Agency reconsidered the Determination and issued a contrary PUA monetary redetermination that the claimant was *not* eligible. On September 9, 2021, the Agency reconsidered the previous redetermination and found the claimant *was* eligible. Then, on October 18, 2021, the Agency reconsidered and issued another redetermination, this time finding

¹ Reconsideration is permitted within the one-year period for good cause shown. Section 32a(2).

² The related case requiring restitution under Section 62(a) for that period is Michigan Office of Administrative Hearings and Rules (MOAHR) Docket No. ██████████. The record for both cases was made at MOAHR under the docket number in this case. The claimant won the restitution case and the Agency did not appeal it.

that the claimant was *not* eligible.³ These redeterminations will be referred to collectively as the “Eligibility Redeterminations.”

After reviewing the record, the Commission finds that the ALJ’s decision must be modified and the Eligibility Redeterminations set aside as void. Further, we find that the May 14, 2020 Determination is final, and that the claimant is eligible for benefits as set forth therein. The Agency may not require repayment of those benefits. Our reasons are as follows.

The CARES Act

As this matter involves PUA, our review begins with the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 15 USC 9021 *et seq.* PUA benefits were established under the CARES Act which was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. UIPL 16-20 at 1 (April 5, 2020). It provides for benefits to individuals who have exhausted their entitlement to regular unemployment compensation (UC) and to individuals who would not otherwise be eligible for regular UC, such as the self-employed or those who have limited recent work history. *Id.* at 1-2. Under the CARES Act, the states are tasked with implementing the program using each state’s unemployment insurance system. 15 USC 9021(f). The implementation instructions to the states are set forth by the Department of Labor’s Employment and Training Administration in the form of Unemployment Insurance Program Letters (UIPLs).

While the CARES Act is a federal program, it shares many characteristics of state unemployment insurance programs. Like in state programs, the state unemployment agency is required to make benefit determinations. The key determination is whether the claimant is *eligible* for benefits. UIPL 16-20 at I-11 states:

Notices to Individuals. a. Determination of Initial Claim. When an individual files an initial claim for PUA **the state agency must determine promptly the eligibility of the individual and, if eligible, the weekly and maximum amounts of PUA payable.** If denied PUA, the individual must be issued an appealable determination. [Emphasis added.]

Once the state agency determines that a person is eligible, it then determines the number of benefit weeks and the weekly benefit amount to which the claimant is entitled. *Id.*

UIPL 16-20, Change 1, April 27, 2020, at I- 3, further provides that the eligibility determination is to be issued in the form of an individual “monetary determination:”

10. Question: How must the state notify an individual when he or she is deemed **eligible** for PUA?

Answer: **If the state determines an individual is eligible for PUA, the state must send an individual monetary determination indicating the program type,**

³ Additionally, the Agency issued three separate monetary redeterminations *on the number of benefit weeks* to which the claimant was entitled. They were issued in February and March of 2021 and are discussed below.

information about benefits, and information about continuing eligibility requirements. [Emphasis added.]

The term “eligible” is defined in the Operating Instructions to mean a person who is a “covered individual.” UIPL 16-20 at I-3. There are two conditions to being a “covered individual.” *Id.* (See also *Id.* at I-2). First, an individual must *not* be entitled to regular state unemployment benefits or other like benefit programs.⁴ Second, the individual must self-certify that he or she is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable due to one of the COVID-19 related criteria set forth in the Act, Section 9021(3)(A)(ii)(I)(aa)–(kk). Thus, the monetary determination constitutes a determination that the claimant meets the two requisite conditions for being a covered individual and is therefore eligible for PUA.

The Eligibility Determination and Redeterminations

We now return to a review of the Determination and Eligibility Redeterminations in this case. An examination of the Determination shows that it operated as a ruling that the claimant was eligible for PUA and set forth the weekly benefit amount and number of benefit weeks to which the claimant was entitled. It states:

Based on the information received, it is determined you qualify for 39.00 weeks of PUA due to being unemployed as a result of the COVID-19 pandemic. Your weekly benefit entitlement is \$160.00. [May 14, 2020.]

The Determination was effective beginning March 1, 2020.

The Determination also set forth the date that the determination became final, in bold text:

Your protest must be received no later than 15-June-2020 or this determination becomes final. [Underline added.]

We must then consider the impact of the Eligibility Redeterminations, which were all issued after the date of finality and more than one year after the Determination.

In the July 8, 2021 redetermination, the Agency revisited claimant’s eligibility, but this time it came to the opposite conclusion:

The job separation that caused you to be unemployed, underemployed, unable, or unavailable for work occurred prior to the COVID-19 pandemic and was not COVID-19 related. [July 8, 2021.]

As a result, the Agency ruled that the claimant was *not* entitled to PUA benefits. It made the decision retroactive to the beginning of the claimant’s benefit year, March 1, 2020.

⁴ UIPL 16-20 at I-3 provides an exhaustive listing of the other benefit programs.

The September 9, 2021 redetermination reversed the July 8, 2021 redetermination and found the claimant eligible. In the last redetermination, issued on October 18, 2021, the Agency reversed itself again, this time finding the claimant *not* eligible for PUA:

You were not employed in 2019 or 2020 immediately prior to the pandemic. Therefore, you have not established that you became unemployed, underemployed, unable or unavailable for work as a direct result of COVID-19. [September 9, 2021]

It too was retroactive to the beginning of claimant's benefit year, March 1, 2020.

The CARES Act specifies that the appeal rights and procedures of the unemployment insurance laws of the administering state control. 15 USC 9021(c)(5)(B)(ii). 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 (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 for good cause, but *only* if the reconsideration is initiated within one year after the mailing of the original determination⁵:

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.** MCL 421.32a(2). [Emphasis added.]

⁵ See also *Dep't of Licensing & Regulatory Affairs/Unemployment Ins Agency v Lucente* ___ Mich ___; ___ NW2d ___ (2021) (Docket No. [REDACTED] and [REDACTED]); slip op at 10; 2021 WL 3236344, at 7.

In this case, there was no reconsideration by the Agency within the 30-day appeal period and thus the May 14, 2020 Determination became final. When the Agency issued the Eligibility Redeterminations, it did so more than one year after the date of mailing of the Determination. Accordingly, they cannot disturb the finality of the Determination (even if issued for good cause) and must be set aside as void for lack of Agency jurisdiction.

The UIA’s Invocation of Section 62(a) Constitutes a Collateral Attack on the Finality of Determinations

In its appeal, the Agency maintains that the Act provides it with “three years to issue decisions to recover[y][sic] improperly paid benefits.” However, the issue in this case is not recovery of benefits. Rather, it is whether this Commission must accord finality to the Agency’s May 14, 2020 Determination. As set forth above, the Commission has ruled that it must, as the Determination became final after the expiration of the 30-day period and the Agency’s untimely redeterminations did not disturb that finality.

The issue the Agency raises, the period of time for **recovery of restitution**, is the subject of another section of the Act. That is Section 62, which is in fact titled, “Recovery of improperly paid benefits.” It is not unusual that a finding of benefit entitlement is later reversed pursuant to the appeals procedure outlined in the Act.⁶ Section 62(a) provides the mechanism for recovering those benefits by authorizing the Agency to issue a separate restitution determination. But this section does not afford the Agency additional time to *reconsider* an original benefit determination. Rather, the starting point for Section 62(a)’s three-year period is the date of finality of an underlying ruling reversing a previous finding of benefit entitlement:

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. [Section 62(a).] [Emphasis added.]

It is uncontroverted that Section 62(a) provides the Agency with three years to issue a separate restitution determination. However, that three-year period is triggered by a final ruling reversing a previous finding of benefit entitlement. A Section 62(a) restitution determination cannot be used to launch a collateral attack on a final determination under Section 32a.⁷ Allowing such would render nugatory the carefully constructed appeal and finality provisions set forth in the Act.

⁶ The decisional process starts with an Agency determination on benefit entitlement under Section 27. An appeal of a determination is first adjudicated by the Agency under Section 32a(1). An appeal proceeds from there to an ALJ under Sections 32a(1) or (3) and 33, then to this Commission under Section 33(2), and ultimately to the circuit court and higher appeals courts under Section 38.

⁷ See *Roman Cleanser v Murphy*, 386 Mich at 703-704, in which the Supreme Court adopted Judge Charles Levin’s Court of Appeals minority opinion, ruling **that final unemployment insurance determinations are protected** under the doctrine of *Res judicata* and not subject to collateral attack. By way of further explanation, the Court adopted footnote 5 which states: “The doctrines of *Res judicata* and collateral estoppel apply to administrative determinations adjudicatory in nature particularly where, as here, a method of appeal is provided and it is clear that it was the legislative intention to make the determination final in the absence of an appeal. See OAG, 1967—1968, No. 4628,

The Benefit Week Redeterminations

We also note that the Agency issued three monetary redeterminations⁸ that altered the number of benefit weeks to which the claimant was entitled. These were issued in the period between the Determination and the Eligibility Redeterminations. These interim redeterminations cannot be used as a jurisdictional bridge between the original Determination and the Eligibility Redeterminations. The time periods set forth in Section 32a run from the date of the “original determination on the disputed issue.” Section 32a(2). See also *Royster v Mich Employment Security Comm*, 366 Mich 415; 115 NW2d 106 (1962). The disputed issue in this case is claimant’s eligibility for PUA. The interim redeterminations did not rule on the claimant’s eligibility for benefits. Rather, they were limited to the number of benefit weeks to which the claimant was entitled.⁹

In sum, for the reasons stated above, we find that the May 14, 2020 Determination is final and must be enforced.

Order and Referral to Agency

IT IS THEREFORE ORDERED that the ALJ’s decision is MODIFIED.

IT IS FURTHER ORDERED that the Agency’s July 8, 2021, September 9, 2021 and October 18, 2021 PUA monetary redeterminations are set aside as void.

IT IS FURTHER ORDERED that the Agency’s May 14, 2020 PUA monetary determination that the claimant is eligible for PUA is FINAL.

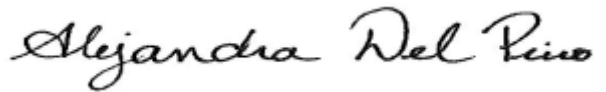
IT IS FURTHER ORDERED that the claimant does not owe restitution for any amounts deriving from the July 8, 2021 and October 18, 2021 redeterminations.

p. 217 (March 25, 1968), which discusses the application of these doctrines to the appeal provisions of the Employment Security Act, the act under which this appeal arises.”

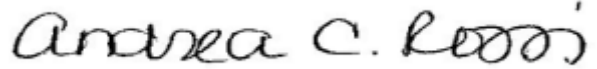
⁸ These were issued on February 1, 2021, March 8, 2021, and March 22, 2021.

⁹ See for example, the February 1, 2021 redetermination in which the claimant was granted an additional 11 weeks of benefits under the Continued Assistance Act (CAA), which was signed into law on December 27, 2020.

This matter is referred to the Agency for action consistent with this decision.



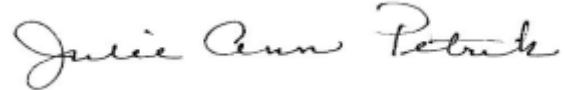
Alejandra Del Pino, Commissioner



Andrea C. Rossi, Commissioner



D. Lynn Morison, Commissioner



Julie A. Petrik, Chairperson



Lester A. Owczarski, Commissioner



Neal A. Young, Commissioner



William J. Runco, Commissioner

MAILED AT LANSING, MICHIGAN May 3, 2022

This decision shall be final unless EITHER (1) the Unemployment Insurance Appeals Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME. June 2, 2022