

STATE OF MICHIGAN  
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[REDACTED]

Claimant.

Appeal Docket No.: [REDACTED] 264147W-REH

UIA Case No.: [REDACTED]

ORDER DENYING APPLICATION FOR REHEARING

This case is before the Unemployment Insurance Appeals Commission (Commission) upon applications of the claimant and of the Unemployment Insurance Agency (Agency) for rehearing of this Commission's decision dated October 27, 2021. The Commission, having read and considered the applications, and having reviewed the record in this matter, is of the opinion that the applications should be denied. Our reasons are as follows.

Regarding the claimant's request, the Commission's decision was favorable to the claimant. There is no additional relief that may be provided by the Commission to the claimant, and therefore we deny the request. We also deny the Agency's request as we conclude that the Agency's position lacks merit. A more detailed explanation of the facts and the law explains that conclusion.

The original determination in this case was issued by the Agency on April 29, 2020. It was a Pandemic Unemployment Assistance (PUA) determination that found claimant qualified for benefits. It states:

Your claim for Pandemic Unemployment Assistance (PUA) was filed on 28-Apr-2020.

Based on the information received, it is determined that **you qualify for 39.00 weeks of PUA due to being unemployed as a result of the COVID-19 pandemic.**

Your weekly entitlement is \$160.00.

This determination is effective beginning 05-Apr-2020.

(Emphasis added.)

On May 19, 2021, over one year after this determination, the Agency issued a redetermination reversing the decision on the qualification issue. Specifically, it ruled that the claimant was not unemployed "as a direct result of COVID-19." The Agency made the ruling retroactive to the beginning of his benefit year, April 5, 2020. This redetermination would allow the Agency to require repayment of the benefits paid under the original qualification determination, set forth above.

This Commission, in its decision issued October 27, 2021, ruled that the Agency did not have jurisdiction to issue the May 19, 2021 redetermination as it was outside the one-year period for reconsideration under Section 32a(2) of the Michigan Employment Security Act (Act). Under that section, determinations become final one year from issuance. They may be reopened and reconsidered within the one-year period, but only if good cause is established. Accordingly, the Commission set aside the May 19, 2021 redetermination as void for lack of jurisdiction.

In its rehearing request, the Agency argues that the Commission erred in setting aside that redetermination. It maintains that a redetermination issued on March 22, 2021, within the one-year period from the April 29, 2020 determination, created the jurisdiction to issue the May 19, 2021 redetermination. That redetermination, however, ruled on the payment of *additional benefits* under the American Rescue Plan Act (ARPA). It did not reach the issue of claimant's qualifications for benefits.

Thus, the question for the Commission is whether the March 22, 2021 redetermination can create jurisdiction for the Agency to reopen the April 29, 2020 determination on claimant's qualification for benefits. In order to address the Agency's position, background information on the process of benefit determination is helpful. During the course of a claim, the Agency may rule on a host of different issues that impact payment of benefits. These issues may include identity, qualification, eligibility, and waiver of restitution, among others.

In PUA cases, the Agency uses monetary determinations and redeterminations for two distinctly different purposes. In the first instance, these adjudications are used to determine whether a claimant is qualified/eligible for benefits. In the second instance, these adjudications are used to determine the amount of benefits and the number of benefit weeks to which a claimant is entitled. The Agency's argument for rehearing hinges on the assertion that the issuance of the PUA non-qualification monetary redetermination issued within the one-year period on March 22, 2021, "resets" the time deadlines imposed on the Agency and allows the Agency to issue a new redetermination on the claimant's qualification/eligibility for PUA - more than one year after the initial determination.<sup>1</sup>

It is undisputed that the Agency's jurisdiction to reconsider a determination is limited by the one-year period set forth in Section 32a. Importantly, and key to resolution of this issue, Section 32a(2) specifies that the one-year period runs from the date of the determination on the "disputed issue:"

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

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<sup>1</sup> The Agency also issued two other monetary redeterminations within the one-year period: one on February 1, 2021, and the other on March 8, 2021. They both ruled on claimant's entitlement to additional weeks of benefits under various federal programs. In its original decision, this Commission considered all three redeterminations and concluded that they could not create jurisdiction as they did not rule on the qualification issue. This Commission referred to them in its original decision collectively, as "interim monetary redeterminations." In its rehearing request, the Agency objected to the terminology. The Commission recognizes that it is not a defined term in the Act. It uses it only as a temporal reference to the monetary redeterminations that were issued between the original determination on claimant's qualification and the May 19, 2021 redetermination at issue in this case.

**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.)

Michigan courts have refused to permit the term “disputed issue” to be read out of Section 32a. For example, in *Royster v Mich Employment Security Comm*, 366 Mich 415 (1962), the Employment Security Commission (MESC) (n/k/a the Unemployment Insurance Agency)<sup>2</sup> issued a determination finding the claimant eligible for a period in January 1958.<sup>3</sup> More than a year after that determination, the employer discovered that the claimant earned wages in that period but failed to report them. The MESC then issued a determination that the claimant engaged in fraud, cancelled his credit weeks, and required repayment of benefits. The claimant argued that the MESC lacked jurisdiction to do so as the determination was outside the one-year period. The *Royster* Court rejected this position. Rather, it adopted the employer’s position (citing *Lee v Mich Employment Sec Comm*) that the fraud issue was separate and distinct from the eligibility determination and jurisdiction was not tied to the prior unrelated issue previously adjudicated:

\* \* \* Section 32a also provides that the [MESC] may reconsider a determination for good cause, provided it is made within 1 year from the date of mailing of the original determination on the ‘*disputed issue*.’ (Emphasis in original.)

The words ‘disputed issue,’ as used in Section 32a, refer to a contested issue or a matter in dispute between the employer and the [MESC]. In such disputed matters, relief must be requested within 15 days or within 1 year for good cause shown. In our opinion, matters not in dispute, such as payments voluntarily made and accepted, do not fall within the restrictions of Section 32a.

*Royster*, 366 Mich at 421.

The *Royster* Court thus ruled that the MESC appropriately exercised jurisdiction as the “disputed issue” had not been previously adjudicated.

Last year, the Michigan Supreme Court reiterated that it is the issue in dispute that is the starting point for the Section 32a analysis, citing *Royster*:

While the language has changed slightly, the MESA still refers to Agency-initiated “redeterminations” as applying where there is a “disputed issue.” See MCL 421.32a(2) (“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* ....”) (emphasis added). As in *Royster*, the issue of fraud was not disputed at the time

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<sup>2</sup> The Agency has undergone several name changes over the years.

<sup>3</sup> See also *Lee v Mich Employment Sec Comm*, 346 Mich 171 (1956).

these appellants received benefits; the Agency first alleged fraud when it issued the “Notice[s] of Redetermination.”

*Dep’t of Licensing and Regulatory Affairs/Unemployment Insurance Agency v Lucente*, No 160843, 2021 WL 3236344, at \*12-13 (Mich July 30, 2021) (emphasis in original).

Accordingly, it is the disputed issue that starts the one-year period - - not any of the many other issues that could be adjudicated by the Agency.

We now turn to the federal legislation under which pandemic unemployment assistance is granted. The Coronavirus Aid, Relief and Economic Security Act or the CARES Act, 15 U.S.C. § 9021(c)(1) provides benefits for workers unemployed due to COVID-19<sup>4</sup> as follows:

**(c) Applicability**

**(1) In General** Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual—

**(A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID–19—**

**(i)** beginning on or after January 27, 2020; and

**(ii)** ending on or before September 6, 2021; and

**(B)** subject to subparagraph (A)(ii), as long as the covered individual’s unemployment, partial unemployment, or inability to work caused by COVID–19 continues.

(Emphasis added.)

In this case, the Agency used the CARES Act standard to determine that the claimant was qualified for benefits in the April 29, 2020 determination. Specifically, it stated that the claimant was “**unemployed as a result of the COVID-19 pandemic.**”

The May 19, 2021 redetermination also applied the CARES Act standard, but this time to reverse the earlier qualification determination. It states:

you have not established that you became unemployed, underemployed, unable or unavailable for work as a direct result of COVID-19.

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<sup>4</sup> The coverage criteria are set forth in Section 9021(a)(3).

The claimant appealed that redetermination. The issue under dispute in the May 19, 2021 redetermination, claimant's qualification for benefits under the CARES Act, is the same qualification issue determined by the Agency in the original determination, to wit, whether his unemployment was due to COVID-19.<sup>5</sup> Thus, as we ruled in our original decision, the Agency did not have jurisdiction to issue the May 19, 2021 redetermination as it had previously ruled on the qualification issue on April 29, 2020, more than one year prior to the redetermination.

Further, we reject the Agency position that the March 22, 2021 redetermination creates a jurisdictional platform from which it can redetermine the issue. That redetermination did not rule on whether claimant's unemployment was due to COVID-19.<sup>6</sup> Rather, it set forth claimant's entitlement to additional weeks arising from the recently enacted ARPA. Indeed, that redetermination is titled "Notice of Additional Benefit Entitlement." It sets forth that the ARPA provides for an additional 29 weeks. And the result of that redetermination was to increase claimant's maximum benefit week entitlement by 29 weeks, from 55 to 84. We reiterate that nowhere in that March 22, 2021 redetermination did the Agency rule on claimant's qualification for PUA.<sup>7</sup>

In sum, the "disputed issue" in this matter is whether the claimant's unemployment was due to COVID-19. The Agency issued a determination on April 29, 2020 finding the claimant met the CARES Act qualification standard. The Agency had one year from that date to issue a subsequent adjudication on the claimant's qualification for benefits, assuming it could also establish good cause for reconsideration. Absent that, the principles of finality embodied in Section 32a foreclose the Agency from reconsidering the qualification issue in the April 29, 2020 determination. As stated by the Court in *Roman Cleanser Co v Murphy*:

A redetermination may, thus, be obtained at any time upon a claim that there has been a change of facts or of law. But, absent a change of facts or of law, questions already decided may not be reopened unless 'for good cause' the commission 'reconsiders' under s 32a.

386 Mich 698, 705 (1972)(footnote omitted).

The Agency is bound by the one-year limitation in Section 32a(2). The May 19, 2021 redetermination was issued more than one year after the original April 29, 2020 adjudication of the disputed issue. Accordingly, we reaffirm our ruling that the Agency did not have jurisdiction to issue the May 19, 2021 redetermination.

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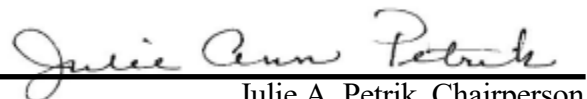
<sup>5</sup> Notably, these two determinations are inextricably intertwined: in the redetermination, the Agency reaches back and makes the effective date April 5, 2020, the effective date established in the original determination.


<sup>6</sup> Furthermore, that redetermination did not assert any "good cause" grounds for reconsideration, a condition for reopening a prior determination under Section 32a(2). Thus, the Agency's position fails on that ground as well.


<sup>7</sup> Likewise, the Agency did not rule on the disputed issue in the two other interim monetary redeterminations. While the Agency recites in conclusory terms that the claimant was qualified for PUA in both the February 1, 2021 and the March 8, 2021 redeterminations, it did not in actuality reconsider his qualifications. Both were issued to rule on the number of benefit weeks to which he was entitled. See also footnote 1.

IT IS THEREFORE ORDERED that the Agency's application for rehearing is DENIED.

FURTHERMORE, the claimant's application for rehearing is DISMISSED, for lack of a justiciable issue.

  
Julie A. Petrik, Chairperson

  
Lester A. Owczarski, Commissioner

  
William J. Runco, Commissioner

MAILED AT LANSING, MICHIGAN January 25, 2022

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before:

**TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME. February 24, 2022**