

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[REDACTED]

Appeal Docket No.: [REDACTED]-23-004454

Claimant,

UIA Case No.: [REDACTED]

[REDACTED]

Employer.

ORDER ALLOWING REOPENING AND REMAND ORDER

This matter is before the Unemployment Insurance Appeals Commission (Commission) pursuant to the Unemployment Insurance Agency's (Agency) timely appeal from an October 10, 2023 decision by an Administrative Law Judge (ALJ). The ALJ affirmed the Agency's October 17, 2022 redetermination and held the claimant was disqualified for benefits under the voluntary leaving provision of the Michigan Employment Security Act (Act), Section 29(1)(a).

The ALJ also found that the claimant does not owe the restitution corresponding to the October 17, 2022 redetermination under Section 62(a) of the Act. She noted that the claimant separated from his employment in May of 2020, but that the Agency did not issue its determination finding the claimant disqualified until over two years later, on September 9, 2022. Specifically, the ALJ stated:

Had the Agency not delayed in issuing a Determination for this extensive period of time, the Claimant would not have incurred nearly \$26,000 in restitution. To hold Claimant accountable for this restitution due to the Agency's delay is unjust. [ALJ at 8.]

It is this waiver of restitution portion of the ALJ decision that the Agency appeals.¹

On December 20, 2023, the Commission issued a remand order that set aside the ALJ's decision and remanded the matter to the ALJ for further evidence on whether restitution should be waived under Section 62(a)(iii) of the Act.

Pursuant to Section 34(7) of the Act, the Commission hereby reopens this case on its own motion and sets aside the Commission's December 20, 2023 remand order along with the October 10, 2023 ALJ decision, and remands this matter for further proceedings.

¹ The initial hearing on claimant's appeal of the redetermination was held on May 17, 2023. The claimant appeared, but the employer and Agency failed to appear. On May 18, 2023, the ALJ issued a decision that affirmed the redetermination and held the claimant disqualified for benefits under Section 29(1)(a) of the Act and subject to restitution under Section 62(a) of the Act. The claimant timely appealed the ALJ's May 18, 2023 decision to the Commission. On July 31, 2023, the Commission issued a remand order that set aside the ALJ's decision and remanded the matter to the ALJ for an additional evidence hearing which was held on September 25, 2023. On October 10, 2023 the ALJ issued the decision that is the subject of this appeal.

To adequately develop the record in this case, we conclude that a remand order with more specific details and instructions is necessary. The Commission has determined that as part of the analysis in this case, it is critical for the ALJ to gather certain facts and evaluate the Agency's authority under Section 27 of the Act. That section was not included in the notice for the September 25, 2023 hearing and was not addressed by the ALJ. Consequently, the Commission finds good cause for reopening of this case on our own motion.

Additionally, the Commission notes that the fact pattern below is not uncommon. Thus, the Commission issues this decision *en banc* as the instructions set forth herein may be helpful to the adjudication of similar cases.

As to the restitution, the October 17, 2022 redetermination notes that principal and penalty amounts may be due and specifically references UIA Form 1301, entitled "Weeks of Overpayment" (1301 Form). The 1301 Form is a document with the same date as the redetermination, and presumably, was sent to the claimant along with the redetermination. The 1301 Form states, "[t]his is a list of the week(s) that you were overpaid benefits." It itemizes the weeks and benefit amounts paid to the claimant between the week ending July 25, 2020 and September 4, 2021, for a total amount of \$25,995.00.² The period that benefits were paid is noteworthy, as it will be a part of the waiver consideration under the framework discussed below.

To determine whether waiver of overpayments is appropriate in this case, we must consider whether the Agency exceeded its authority under Section 27(a)(1) of the Act to make payment to claimants. If the Agency exceeded its authority,³ waiver of the overpayments may be required under the administrative and clerical error provision of Section 62(a)(iii) of the Act.⁴

In this case, it appears that the Agency may have acted outside of the statutory authorization, and paid benefits prior to making a determination that they were due. However, we find that the record is insufficient to support the order waiving restitution and remand this case to the ALJ for further fact-finding and a new decision.

Before we go into further detail on the history of this case, we set forth the statutory framework for payment of benefits. We start with Section 27(a)(1) as it is the provision that authorizes the payment of benefits to claimants:

When a determination, redetermination, or decision is made that benefits are due an unemployed individual, the benefits become payable from the fund and

² The Agency is a party to every unemployment insurance benefit case. Section 34(3). When a case on appeal is transferred for a hearing before an ALJ, the Agency provides the hearing office with the underlying jurisdictional documents. These include the Agency's initial determination, the redetermination, and any protests or appeals. It may also include the 1301 Form. When an ALJ's decision is appealed to this Commission, these items, along with the notice of hearing, the ALJ's decision, and the record evidence are transferred to the Commission from the Michigan Office of Administrative Hearings and Rules (MOAHR).

³ "Just as we require claimants and chargeable employers to follow the procedural and substantive requirements of the MESA, so too must the Agency. See *In re Reliability Plans*, 505 Mich at 119, 949 NW2d 73; see also *Coffman v State Bd of Examiners in Optometry*, 331 Mich 582, 589, 50 NW2d 322 (1951) (explaining that an administrative agency cannot "enlarge its authority or exceed the powers given to it by the statute, the source of its power") (quotation marks and citations omitted)." *Dep't of Licensing & Regulatory Affairs/Unemployment Ins Agency v Lucente*, 508 Mich 209, 244; 973 NW2d 90 (2021).

⁴ Section 62 sets forth three situations where waiver is not permitted, which in general terms, involve a failure to provide complete and accurate information to the Agency.

continue to be payable to the unemployed individual, subject to the limitations imposed by the individual's monetary entitlement, if the individual continues to be unemployed and to file claims for benefits, **until the determination, redetermination, or decision is reversed**, a determination, redetermination, or decision on a new issue holding the individual disqualified or ineligible is made... [Emphasis added.]⁵

Under this section, whether benefits are payable is contingent upon the results of the decision-making process. The decision can be in the form of a “determination,” “redetermination,” or “decision,” depending on the stage of the process. (See Section 32a and Section 33.⁶) The singular decision at issue under this section is whether “benefits are due an unemployed individual.” **If the result of the decision-making process is that “benefits are due,” only then do “benefits become payable from the fund.”** Section 27(a)(1). See also UIPL 1145 and Attachment (November 21, 1971). Likewise, benefits “continue to be payable” (assuming all other criteria are met), but only “*until* the determination, redetermination or decision is reversed” or there is a decision “on a new issue holding the individual disqualified or ineligible.”⁷ In sum, under Section 27, the legislature strictly limited the authority of the Agency, making it permissible to pay benefits only if a determination has been made that “benefits are due.”

As to what it means to make a “determination,” the Michigan Supreme Court has stated: “The MESA does not define the term ‘determination,’ but the act tells us in what circumstances a ‘determination’ can be made. **In the context of a claim for benefits, a ‘determination’ is an official decision by the Agency that involves agency fact-finding and application of law (the MESA) to those facts.** See *Black’s Law Dictionary* (11th ed.) (defining “determination” as “[t]he act of deciding something officially”).” *Dep’t of Licensing & Regulatory Affairs/Unemployment Ins Agency v Lucente*, 508 Mich 209, 218; 973 NW2d 90 (2021) (emphasis added).

The process for determining whether benefits are due is set forth in Section 32 of the Act. It requires the Agency to “promptly” examine benefits claims and “make a determination” on the facts:

421.32 Claims for benefits; examination; determination; notice.

(a) Claims for benefits shall be made pursuant to regulations prescribed by the unemployment agency. The unemployment agency shall designate representatives **who shall promptly examine claims and make a determination on the facts.** [Emphasis added.]

Section 32(a) further dictates that the Agency’s determination must be provided to the parties and include “the reasons for the determination.”

The eligibility determination is a two-part process. The first part is set forth under Section 32(b) which requires the Agency to determine whether the claimant is *monetarily* eligible. It involves determining whether the claimant earned sufficient wages based on previous employment. The

⁵ For further history on the adoption of this portion of Section 27(a)(1), see footnote 12, *infra*.

⁶ Determinations and redeterminations occur at the Agency level (Sections 32 and 32a) while decisions are made by the ALJ and the UIAC (Sections 33 and 34).

⁷ See also *Lucente*, 508 Mich 209, 221; 973 NW2d 90 (2021), in which the Court noted that the claimant is allowed to “claim benefits” “*if* the claimant’s application for benefits is approved” (emphasis added).

monetary determination itself must state whether the claimant is “monetarily eligible” for benefits and must also include the reason the claimant reported for the separation.

The second part, set forth in Section 32(c), involves determining whether the separation was through no fault of the claimant. This is called the *nonmonetary* determination. Under Section 32(c), the Agency must examine the reasons for the separation from the most recent employer and determine whether the separation disqualifies a claimant from receiving benefits. Disqualifications are set forth under Section 29(1) and include voluntary leaving “without good cause attributable to the employer...” (29(1)(a)) and “discharge for misconduct for work,” (29(1)(b)), among others. It must also determine the claimant’s nonmonetary eligibility as to all base period separations. (For example, an employee who initiates a leave of absence within the meaning of Section 48(3), does not meet the Section 28(1)(a) “unemployed,” eligibility requirement.)

Thus, the Agency must issue both a Section 32(b) *monetary* determination and a Section 32(c) *non-monetary* determination.⁸ If both eligibility criteria are satisfied, benefits are due within the meaning of Section 27.⁹ In its summary of Section 32, the *Lucente* Court demonstrated this link between the eligibility determination and the payment of benefits under Section 27 stating, “[t]ogether Subsections [32](a) through (c) facilitate the expeditious resolution of **whether the applicant is due unemployment benefits.**” 508 Mich 209, 220; 973 NW2d 90 (2021) (emphasis added).

Once the Agency has made its determination that benefits are due and starts issuing benefit checks, each benefit check is considered a Section 32(f) determination. Section 32(f) provides:

The issuance of each benefit check shall be considered a determination by the unemployment agency that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits.¹⁰

With that framework in mind, we now turn to the history of this case. The claimant filed for benefits on July 21, 2020. [See July 23, 2020 Monetary Determination, admitted at ALJ hearing as Exhibit 1, p 1.] On July 23, 2020 and in accordance with Section 32(b), the Agency issued a determination that the claimant was *monetarily* eligible for unemployment benefits. *Id.* Specifically, the first paragraph of the determination states: “You earned enough wages during your base period and you meet the monetary requirements.” The monetary determination also lists “Quit” as the claimant’s reason for the claimant’s separation from the involved separating employer. The name of the separating employer is also listed.

⁸ The single exception, not relevant here, provides that the Agency need not *issue* a Section 32(c) determination where the claimant’s separation was due to lack of work (i.e., a layoff). In those cases, the Agency must still *make* a determination that the separation was for lack of work. See Section 32(a) and 32(c).

⁹ After the *initial* eligibility determination, to remain eligible in a *continued claim* series, claimants must also satisfy the weekly eligibility requirements. These include actively seeking work, among others. See Section 28(1)(a)-(e). Claimants must provide weekly certifications (“continued to report”) during their continued claim series. See Mich Admin Code, R 421.210(1) and (2)(c).

¹⁰ But see *Lucente*, 508 Mich 209, 241; 973 NW2d 90 (2021): “Absent [an employer] protest. . . , the benefit check cannot serve as a ‘determination’ for an Agency-initiated ‘redetermination.’” The meaning of that holding is unclear in the context of this factual situation.

As set forth above, the monetary determination is only the first half of the Section 27(a)(1) equation. Notably, the body of the monetary determination explicitly acknowledges that another determination would be forthcoming on the other eligibility requirements:

You must also meet other requirements to be eligible for benefits. For example: If you quit or were fired from your job, Unemployment Insurance Agency will request information from you and your employer about your separation. **A determination will be made regarding your eligibility for benefits and this will be mailed separately.** [Exhibit 1 p 1, emphasis added.]

This is where the record becomes unclear. The monetary determination was issued on July 23, 2020. Shortly thereafter, the Agency would typically move to part two of the process and issue a nonmonetary determination on whether the claimant's quit was disqualifying. As noted above, under Section 32(a), the Agency is to "promptly examine claims and make a determination on the facts."

But the Agency did not issue the Section 32(c) nonmonetary determination until over two years later, on **September 9, 2022**. [Admitted at ALJ hearing as Exhibit 2.] In that determination, the Agency found that the claimant's separation was a Section 29(1)(a) *disqualifying* quit. In other words, based on that determination, benefits *were not due*.

Nonetheless, from the record before us, it appears that the Agency began paying the claimant all the way back *in 2020—two years prior to the September 9, 2022* Section 32(c) determination. Indeed, based on the 1301 Form, it appears as if the Agency paid the claimant 58 weeks of benefits by the time it issued the disqualifying determination—the first benefit payment for the week ending **July 25, 2020 and continuing payments through benefit week ending September 4, 2021**. [See Exhibit 2.]¹¹ The total amount of overpaid benefits asserted therein is \$25,995.00.

The claimant protested the determination. As noted above, the Agency affirmed the determination in the October 17, 2022 redetermination, and affirmed the overpayment amounts by including the 1301 Form that itemized the overpayments for the weeks set forth in the prior 1301—again for a total overpayment of \$25,995.00.

¹¹ It is not clear from this record when the payments first began. As such, our order below instructs the ALJ to obtain this information.

Thus, at the present stage, the record lacks any evidence that the Agency ever made a determination that benefits *were due* to the claimant.^{12 13}

Under Section 62(a) of the Act, the Agency is required to waive recovery of improperly paid benefits if repayment would be contrary to equity and good conscience. Equity and good conscience includes “payments result[ing] from an administrative or clerical error.” Section 62(a)(iii). In our view, payment of benefits in the absence of a Section 27(a) determination that “benefits are due” could be an administrative and/or clerical error. We also note that there may be other grounds for waiver under Section 62(a)(iii) and consideration thereof should not be foreclosed by the analysis set forth herein.

There is another possibility to consider - whether the Agency considers the purported¹⁴ payment of benefits between the weeks ending July 25, 2020 and September 4, 2021 to be Section 32(f) benefit check determinations that the claimant was eligible and qualified for benefits in each of the payment periods.

However, further evidence is needed on the Agency’s decision to pay benefits. The Commission recognizes that this jurisdictional record may be incomplete. As such, the Agency must be allowed to present evidence that the Agency determined that benefits were due and the date thereof. It must also be allowed to present evidence of the reasons it paid benefits to the claimant. Additionally, the record must be supplemented with additional evidence on when payments were made to the claimant and why they were made on those particular dates. If the Agency considers any of the benefit checks it issued to the claimant to be a determination under Section 32(f), the Agency should be allowed to present that position.

¹² In its appeal, the Agency argues that its September 9, 2022 determination on the claimant’s separation from the employer is a *new* issue for adjudication under UIPL 01-16 (October 10, 2015). However, because that UIPL governs payment procedures on *continued claims*, this argument misses the mark. After the state’s *initial* eligibility decision, continued eligibility is determined on a week-by-week basis and a claimant must certify as to continued eligibility for each week. UIPL 04 01 (October 27, 2000). See Michigan’s weekly eligibility requirements in Section 28. UIPL 01-16 provides payment instructions where a “new” eligibility issue arises in a “continued claim” series. This case involves the *initial* eligibility decision—not a continued claim. The applicable procedures for the initial eligibility determination are in UIPL 1145 (November 12, 1971). That UIPL followed the Supreme Court’s landmark decision in *Calif Dep’t of Human Resources Dev v Java*, 402 US 121; 91 S Ct 1347 (1971), on whether California’s procedures complied with Section 303(a)(1) of the Social Security Act which requires methods of administration reasonably calculated to insure payment of unemployment compensation “when due.” The “when due” standard means that a state’s procedures must determine both the claimant’s monetary and nonmonetary eligibility prior to payment. UIPL 1145 and Attachment—generally and Section I. 4 & 5, Section IX. C. In 1972, the year after *Java*, the Michigan legislature amended Section 27 to include the clause when “benefits are due.” In a later UIPL, the DOL explained: “As well as promptness, the Department has always interpreted ‘when due’ in Section 303(a)(1), SSA, to require accuracy **in order to ensure that payments are not made when they are not due.** See 20 CFR 602.11(a) and 602.21(c). Proper application of Section 303(a)(1) requires an appropriate balancing of the dual concerns of promptness and accuracy in the ‘when due’ provision.” UIPL 04-10 Section 4 (October 27, 2000) (emphasis added).

¹³ The Agency also argues that under Section 62(a), it is permitted to issue a “determination” within three years of the date a claimant received benefits in the benefit year in which the issue arose. This argument is also misplaced. The determination at issue here is the claimant’s *initial* eligibility for benefits—a determination that is required under Section 32. It is not recovery of improperly paid benefits which is a separate and distinct determination required under Section 62(a). Section 62(a) states in pertinent part: “If the unemployment agency **determines** that an individual has obtained benefits to which the individual is not entitled...” (emphasis added). It then sets forth various methods to recover those payments, including by cash or deduction from tax refund.

¹⁴ We use the term “purported” because the Court of Appeals in *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 491; 906 NW2d 482 (2017), found that a redetermination accompanied by the 1301 Form “List of Overpayments” was insufficient evidence of payment by the Agency, but rather represented “nothing more than requests for payment.” To ensure compliance with *Lawrence*, this remand directs the ALJ to subpoena the Agency to produce payment documents, including benefit checks.

Finally, in its appeal, the Agency argues that the claimant's misstatement regarding the reason for his job separation caused the overpayment. The ALJ shall take evidence on the claimant's statement in his claim application and any other claimant statements relied upon by the Agency in issuing payment.

Based on the foregoing, we remand this matter to the ALJ to take additional evidence as outlined herein and issue a new decision on the underlying Section 29(1)(a) voluntarily leaving issue, restitution under Section 62(a), and waiver of restitution on Section 62(a)(iii).¹⁵

Therefore,

IT IS ORDERED that for the reasons stated above, the Commission finds good cause for reopening this matter on its own motion.

IT IS FURTHER ORDERED that the Commission's December 20, 2023 remand order is SET ASIDE.

IT IS FURTHER ORDERED that the ALJ's October 10, 2023 decision is SET ASIDE.

IT IS FURTHER ORDERED that this matter is remanded to the ALJ to notice a hearing to take additional evidence and testimony.

The notice shall include Sections 29(1)(a), 27(a)(1), 62(a), and 62(a)(iii).

No further evidence needs to be taken on the underlying voluntary leaving issue under Section 29(1)(a), as the record was adequately developed on that issue.

The ALJ shall subpoena the Agency to produce the following documents regarding the claimant's benefit claim in this matter:

- (1) The claimant's claim application, benefit year beginning date July 19, 2020;
- (2) All documents authorizing payment to the claimant, including all (re)determinations and all associated internal Agency notes, policies or directives;
- (3) All correspondence to the employer and the employer's responses;
- (4) Any Agency instructions, policies or directives authorizing payment in the claimant's circumstances.

¹⁵ This remand order outlines a very specific basis for determining whether restitution should be waived under 62(a)(iii). The Commission would take this opportunity to note that in addition to the basis outlined above, there may be other circumstances warranting a waiver of restitution under 62(a)(iii) where there is sufficient record evidence of administrative or clerical error. However, we wish to clarify the fact that because MCL 421.62(a) uses the phrase, "... the unemployment agency shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience..." does not confer ALJ's with the authority to waive restitution in every instance they see fit. The statute provides guardrails in subsections 62(a)(i) to 62(a)(iii) and, thus, requires sufficient record evidence to judiciously make a such a finding and only where there is competent, material and substantial evidence. Notably, where there is sufficient record evidence, waiver is mandatory: "[T]he agency *shall* waive recovery..." Section 62(a) (emphasis added). However, where no such evidence is contained in the record, an ALJ's finding of agency error will likely result in a remand or a reversal.

- (5) Documents establishing the date of payment and amount, including copies of benefit checks.

The subpoena shall also direct the Agency to produce a witness who can lay an appropriate foundation for these documents and provide responsive testimony to the questions set forth below.

At the hearing, the ALJ shall question the Agency's witness, and the Agency witness must be prepared to testify as to the following:

- (1) Whether the Agency made a determination that benefits were due to the claimant and the date of the determination;
- (2) Whether the benefit checks were considered by the Agency to be Section 32(f) determinations;
- (3) The basis or authority upon which the Agency relied in paying benefits to the claimant;
- (4) Any instruction, policy, or directive to pay the claimant;
- (5) Why the Agency issued the nonmonetary determination on September 9, 2022 and not sooner;
- (6) The date upon which the Agency completed its investigation of the facts involving claimant's separation and any documents evidencing the date of completion;
- (7) Whether payment to the claimant was a result of an administrative or clerical error;
- (8) The Agency's position as to whether restitution should be waived; and
- (9) Any other related matter, at the ALJ's discretion.

The ALJ shall readmit all the jurisdictional documents in this case that were admitted at the September 25, 2023 hearing, including the monetary determination, the nonmonetary determination, nonmonetary redetermination, and all other relevant exhibits admissible under the evidentiary rules.

Additionally, if at any point in time, the Agency determined that the claimant's separation was a non-disqualifying separation for lack of work under Section 32(c), it must provide the date that it made that determination, all records documenting the date it made the determination, the basis for that determination and any documentation it relied upon to make that determination. See footnote 8.

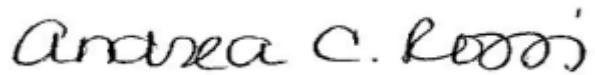
After receiving evidence, the ALJ shall consider the entire record (including hearings on May 17, 2023 and September 25, 2023) and make new findings of fact on the following issues: (a) whether the Agency issued or made a determination that benefits were due the claimant and the date of that determination; (b) the dates the Agency issued benefit checks to the claimant; (c) whether the Agency was authorized to make such payments to the claimant under Section 27(a)(1) and UIPL 1145; and (d) whether the claimant's restitution should be waived under Section 62(a)(iii) of the Act.

Thereafter, the ALJ shall issue a new decision which shall include the voluntary leaving issue under Section 29(1)(a), restitution under Section 62(a), and waiver of restitution under Section 62(a)(iii).

The Commission retains no jurisdiction in this matter.



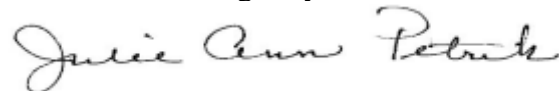
Alejandra Del Pino, Commissioner



Andrea C. Rossi, Commissioner




George Wyatt III, Commissioner



Julie A. Petrik, Chairperson



Lester A. Owczarski, Commissioner



William J. Runco, Commissioner

MIKHAIL ALBUSEIRI COMMISSIONER, CONCURRING IN PART AND DISSENTING IN PART:

I agree with the portion of the Commission majority's *en banc* opinion that allowed reopening and set aside the Commission's December 20, 2023 remand order. I also agree with the legal analysis set forth in the Commission majority's *en banc* opinion in regard to the detailed outline of the evidence to be gathered by ALJ's in such cases.

However, I disagree with the portion of the Commission majority's *en banc* opinion that set aside the ALJ's October 10, 2023 decision. I would affirm the ALJ's decision and find the claimant disqualified for benefits under the voluntary leaving provision of the Act, Section 29(1)(a), and


not subject to restitution under Section 62(a) of the Act by application of Section 62(a)(iii) of the Act. My reasons are as follows.

I find the ALJ's findings of fact accurately reflect the evidence introduced during the hearing. The ALJ properly applied the law to those facts. I also note the following:

Outside of the basic facts in this case, the procedural history herein is somewhat unique in that it represents the second remand. Instead of remanding this matter yet again, I would employ the missing witness rule and allow for the adverse inference that the Agency's failure to appear at the September 25, 2023 hearing on remand means that paying the claimant \$25,995.00 from July 25, 2020 through September 4, 2021 - while the claimant had correctly reported to the Agency the nature of his separation - established an Agency administrative error. See generally *People v Perez*, 469 Mich 415, 421; 670 NW2d 655 (2003) (upholding the viability of the missing witness jury instruction); see M Crim JI 5.12 (formerly CJI2d 5.12) (“[*State name of witness*] is a missing witness whose appearance was the responsibility of the prosecution. You may infer that this witness's testimony would have been unfavorable to the prosecution's case”).

Our initial remand order of July 31, 2023, expressly raised the issue of 62(a)(iii) although we did not direct the ALJ to subpoena the Agency. Even so, the Agency cannot claim convincingly on the one hand that its presence is critical to determine an administrative or clerical error under 62(a)(iii) and then choose not to appear. It is well known that a subpoena is not necessary for the Agency to appear because it is deemed “an interested party” to any and all proceedings before MOAHR. See MCL 421.34(3).

Generally, without Agency testimony, one cannot reasonably expect to establish administrative error through direct evidence, only through circumstantial evidence. If the Agency fails to participate in a hearing, there is nothing left but to draw the adverse inference against the Agency. Consequently, I would affirm the ALJ's decision as I have outlined above. As the Commission majority has decided otherwise, I respectfully dissent in part.



Mikhail Albuseiri, Commissioner

Dated and mailed at
Lansing, Michigan, on March 22, 2024