



Docket No.: 20-024143

Case No.: 24375735

Employer:

Claimant:

SSN:

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 përktheni dokumentin.

### ORDER

The Agency's October 16, 2020 Redetermination is affirmed.

The claimant is ineligible from receiving benefits pursuant to the ability provision, Section 28(1)(c), of the Michigan Employment Security Act (Act).

Further determinations consistent with this decision are left to the Agency.

Decision Date: December 8, 2020

  
LINDSAY WILSON  
ADMINISTRATIVE LAW JUDGE

20-024143

**PARTICIPANTS**

		12-01-20					
		Sworn		Sworn		Sworn	
Claimant	██████████	X	X				
Representative	David Blanchard, Attorney for Claimant	X					
Witness							
Witness							
Witness							
Witness							
Employer							
Representative							
Witness							
Witness							
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**EXHIBITS**

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

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## JURISDICTION

On November 12, 2020, the claimant timely appealed an October 16, 2020 Unemployment Insurance Agency (Agency) Redetermination which held the claimant ineligible for benefits under the ability provision, Section 28(1)(c), of the Michigan Employment Security Act (Act), beginning June 28, 2020 and continuing.

## ISSUE

Is the claimant ineligible for benefits under the ability provisions of Section 28(1)(c) of the Act?

## APPLICABLE LAW

Section 28 of the Act provides:

(1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:

(c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. An individual is considered unavailable for work under any of the following circumstances:

(i) The individual fails during a benefit year to notify or update a chargeable employer with telephone, electronic mail, or other information sufficient to allow the employer to contact the individual about available work.

(ii) The individual fails, without good cause, to respond to the unemployment agency within 14 calendar days of the later of the mailing of a notice to the address of record requiring the individual to contact the unemployment agency or of the leaving of a telephone message requesting a return call and providing a return name and telephone number on an automated answering device or with an individual answering the telephone number of record.

(iii) Unless the claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as undeliverable and the telephone number of record has been

disconnected or changed or is otherwise no longer associated with the individual.

The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948).

\* \* \*

Section 2102(a)(3) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act provides in pertinent part:

(3) Covered Individual. – The term “covered individual” –

(A) means an individual who – \*\*\*

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially un-employed, or unable or unavailable to work because— \*\*\*

(jj) the individual’s place of employment is closed as a direct result of the COVID–19 public health emergency;

### **FINDINGS OF FACT**

The claimant filed a claim for Pandemic Unemployment Assistance (PUA) on April 21, 2020 and established a benefit year beginning March 22, 2020. Prior to filing her claim for PUA benefits, the claimant was working as a 1099 independent contractor at various auction houses. However, as a result of the COVID-19 pandemic, the auction houses shut-down their operations.

The claimant is currently receiving Social Security Disability Insurance (SSDI). Based on her receipt of SSDI, the claimant is only able to work part-time.

### **REASONING AND CONCLUSIONS OF LAW**

As noted above, the claimant filed a PUA claim under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Section 2102(a)(3)(A)(ii)(I) of the CARES Act defines a “covered individual” as someone who “is *otherwise able to work and available for work within the meaning of applicable State law*, except the individual is unemployed, partially unemployed, or unable or unavailable to work because . . .”.

Under Section 28(1)(c) of the Michigan Employment Security Act, an individual shall be eligible to receive benefits if the individual is “able and available . . . to perform suitable

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full-time work of a character which the individual is qualified to perform by past experience or training.” The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948).

Here, it was undisputed that the claimant was not able to work full-time within the meaning of Section 28(1)(c) of the Act. The claimant acknowledged she is only able to work part-time due to her receipt of SSDI. Although the claimant’s separation from part-time work was due to a COVID-19 related reason, the CARES Act still requires the claimant to be able to work “within the meaning of applicable State law”. Since she is not able to work full-time as required under Michigan law, the claimant is ineligible for benefits pursuant to the ability provision, Section 28(1)(c), of the Act.

Of note, the claimant’s counsel argued that the July 27, 2020 U.S. Department of Labor letter addressed to the State of Wisconsin Department of Workforce Development, establishes that the claimant is eligible for PUA while receiving SSDI. This letter, however, provides an analysis under applicable Wisconsin state law, but does not address the applicable Michigan state law. Additionally, the July 27, 2020 letter only states that an individual receiving SSDI *may be eligible* for a PUA benefit. Similarly, the UI Program Letter No. 16-20 Change 1, also uses the same language by stating that an individual “*may be eligible*” for PUA benefits under certain circumstances. On review of the record and the applicable law, the argument that the claimant is eligible for PUA benefits based solely on her loss of part-time work due to a COVID-19 related reason is unpersuasive.

**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:

**January 7, 2020**

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, P. Osborne, certify a copy of this order has been sent on the day it was signed, to

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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 بتعويضات البطالة، ومسئولياتك وأثر تخصصاتك، وأذلك فمن المهم جداً أن تفهم البيانات الواردة في هذا المستند.  
على الفور: إذا كنت بحاجة إلى مساعدة لتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقيتها."

## Bengali

“ওরুদ্বপূর্ণ এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে ওরুদ্বপূর্ণ সূচনা দেওয়া আছে। এটা ওরুদ্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেবেন।  
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 **611 West Ottawa, 2nd Floor, Lansing, MI 48933** 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.

**If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.**

## 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/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_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.