

APPENDICES

Rule 14.1(i)(i) Opinion and Order

**APPENDIX A
MICHIGAN 30TH JUDICIAL CIRCUIT COURT
DENIAL OF APPEAL FROM
UNEMPLOYMENT INSURANCE APPEALS
COMMISSION DENIAL OF BENEFITS**

January 22, 2021

No. 20-301-AE

STATE OF MICHIGAN, IN THE 30TH
JUDICIAL CIRCUIT FOR INGHAM COUNTY
(HON. WANDA M. STOKES)

JAMES EDWARD WHITE, Appellant,

v.

MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMPENSATION DIVISION¹¹,
Appellee.

ORDER AND OPINION

At a session of said Court held in the city of
Mason, County of Ingham, this [22] day of January,
2021.

¹¹ The case was filed as JAMES EDWARD WHITE, Plaintiff-Appellant V MICH ST UNIVER UNMPL COMP DIV and Michigan Unemployment Insurance Agency, Defendant(s)-Appellee(s). Why the 30th Circuit Court clerk removed the Unemployment Insurance Agency is unknown though the UIA did respond.

This matter comes before the Court on Appellant's claim of appeal from the Michigan State University Unemployment Compensation Division's decision to deny Appellant unemployment benefits for the week ending on September 30, 2017 because the Appellant had been paid out for vacation time. Though the parties requested oral argument, in accordance with MCR 7.114(A) this Court finds that the briefs and record adequately present the facts and legal arguments and the court's deliberation would not be significantly aided by oral argument. Thus, this Court having reviewed the parties' written briefs, and the Court being otherwise fully advised in the premises; AFFIRMS the decision of the Appellee and dismisses the case.

FACTS

Appellant is an employee with Michigan State University. In 2017, he was briefly laid off by the University, only to be rehired several months later. Appellant was paid \$2,604.26 for his accrued vacation time. During that same period, Appellant applied for unemployment benefits through the Michigan State Unemployment Compensation Division. Appellant was informed that he was eligible for \$362 per week. Appellant was then informed that he would not be eligible to receive the weekly benefit for the week of September 30, 2017, because his vacation accrual payout made him ineligible. Appellant appealed.

An administrative hearing was held on the matter on November 5, 2017. After weighing the evidence, the Administrative Law Judge ("ALJ") affirmed the decision of the agency, holding that Appellant's vacation accrual payment made him

ineligible for unemployment benefits the week of September 30, 2017 under Section 27(c) and 48(2) of the Michigan Employment Security Act. Appellant appealed to the UAIC on January 15, 2018. UIAC affirmed the ALJ's decision on March 7, 2018. A rehearing was denied on April 2, 2018. The UIAC informed the Appellant that its decision would become final if he did not appeal to the Circuit Court by March 8, 2019. Thus, the case became a "closed case." To reopen a closed case, Appellant must establish "good cause" for the case to be reopened. Appellant then appealed to this Court.

STANDARD OF REVIEW

"The review [of an agency decision] shall include. . . the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases which a hearing is required, whether the same are supported by *competent, material and substantial evidence on the whole record*." Const 1963, art 6, § 28 (emphasis added); see *Union Bank & Trust Co v First Michigan Bank & Trust Co*, 44 Mich App 83; 205 NW2d 54 (1972). "Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion."

City of Romulus v Mich Dep 't of Environmental Quality, 260 Mich App 54, 63 (2003). The evidence must be "more than a scintilla of evidence, [but] it may be substantially less than a preponderance." *In re Payne*, 444 Mich 679, 692 (1994).

Th[e] standard [with respect to agency interpretations] requires 'respectful consideration' and 'cogent reasons' for

overruling an agency's interpretation. Furthermore, when the law is 'doubtful or obscure,' the agency's interpretation is an aid for discerning the Legislature's intent. However, the agency's interpretation is not binding on the courts, and it cannot conflict with the Legislature's intent as expressed in the language of the statute at issue.

In re Complaint of Rovas Against SEC Michigan, 482 Mich 90, 103; 754 NW2d 259,267 (2008).

A court should not superimpose its judgment on that of the administrative agency, view questions of fact and weigh evidence, or determine whether the probabilities preponderate one way or the other but should determine whether the evidence justifies the findings of the agency. *Regents of Univ of Michigan v Michigan Employment Relations Comm*, 389 Mich 96, 103; 204 NW2d 218, 221 (1973). A reviewing Court must not substitute its opinion even if it would have reached a different decision had it been in the position of the agency. *Knowles v Civil Service Comm*, 126 Mich App 112, 118; 337 NW2d 247 (1983). Deference must be given to an agency's findings of fact, and "great deference should be given to an agency's administrative expertise." *Huron Behavioral Health v Dep 't of Community Health*, 293 Mich App 491, 497 (2011).

I. Appellant is time-barred from appealing the UIAC's Final Order.

Appellant is time barred from appealing the UIAC's final order to this Court. The UIAC's final order on this matter was issued on March 7, 2018. Appellant had until March 8, 2019 to appeal to this

Court. Appellant was informed of this in the UIAC's Final Order. Appellant failed to file an appeal with this Court until January 27, 2020.

Thus, this Court's jurisdiction is limited to whether there is "good cause" to reopen the case before the UIAC.

II. Appellant did not establish the requisite "good cause" to reopen his case before the UIAC.

For the case to be reopened before the UIAC the Appellant must establish the requisite "good cause" under MCL 421.34. The Michigan Administrative Rules set out what is considered "good cause" under Michigan law.

- (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.
- (2) If, before the start of an initial hearing before the office of appeals, the agency receives new, additional, or corrected information or discovers an administrative clerical error in the claim, the matter may be returned to the agency for reconsideration and redetermination.

Mich. Admin. Code R. 421.270.

Appellant did not address MCL 421.34 in his appeal. He did not attempt to establish "good cause" under the Michigan Administrative Code. Rather, Appellant attempted to draw this Court's attention to the factual determinations made by the UIAC. Such a review is improper because the Appellant's appeal is limited to determining whether "good cause" to reopen his case has been established. Appellant has failed to do so.

CONCLUSION

For the aforementioned reasons, the Court finds that the Appellant's appeal is time barred and that Appellant has failed to establish the requisite good cause to reopen his appeal before the UIAC.

THEREFORE, IT IS ORDERED that is the decision of the Appellee is AFFIRMED and Appellant's Appeal is DISMISSED.

In accordance with MCR 2.602(A)(3), the Court finds that this Order disposes of the last pending claim and closes this case.

APPENDIX B MICHIGAN 30TH CIRCUIT COURT RECONSIDERATION OF DENIAL OF BENEFITS

February 17, 2021

No. 20-301-AE

This reconsideration denial is a copy of Appendix D with the case number ~~20-191-AS~~ lined out and the *20-301-AE* one hand written in plus the February 17 date as above.

APPENDIX C
30TH CIRCUIT COURT COMPLAINT FOR
ORDER OF SUPERINTENDING CONTROL
DISMISSAL

May 26, 2020

No. 20-191-AS

STATE OF MICHIGAN, IN THE 30TH
JUDICIAL CIRCUIT FOR INGHAM COUNTY
(HON. WANDA M. STOKES)

In re: James White Complaint for Order of
Superintending Control

ORDER OF DISMISSAL

At a session of said Court held in the city of
Mason, county of Ingham, this [26] day of May, 2020.

This matter comes before the Court on Petitioner
James E White's Complaint for Order of
Superintending Control, filed March 27, 2020.

Orders for superintending control are governed
by MCR 3.302, which provides that such orders
supplant various writs in the context of one court
exercising its superintending control power over a
lower court. Pertinently, MCR 3.302(D)(2) provides
that where an appeal is available, a complaint for
superintending control must be dismissed.

Here, an appeal arising from the same dispute is
currently pending before the Court of Appeals,
Docket No. 349812. The docket listing indicates the
case is open, and no disposition of the matter is
apparent.

THEREFORE IT IS ORDERED that this matter is DISMISSED for lack of subject-matter jurisdiction.

In accordance with MCR 2.602(A)(3), the Court finds that this order resolves the last pending claim between the parties and closes the case.

APPENDIX D
30TH CIRCUIT COURT COMPLAINT FOR
ORDER OF SUPERINTENDING CONTROL
DISMISSAL RECONSIDERATION

February 2, 2021

No. 20-191-AS

STATE OF MICHIGAN, IN THE 30TH
JUDICIAL CIRCUIT FOR INGHAM COUNTY
(HON. WANDA M. STOKES)

JAMES EDWARD WHITE, Appellant,

v.

MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMPENSATION DIVISION,
Appellee.

ORDER DENYING APPELLANT'S MOTION FOR
RECONSIDERATION

At a session of said Court held in the c! of Mason,
County of Ingham, this [2] day of February, 2021

This matter comes before the Court on
Appellant's Motion to Reverse or Correct Dismissal.
Appellant filed a Complaint with this Court in
March of 2020, asking this Court for an Order of
Superintending Control over the UIAC. On May 24,

2020 this Court entered an Order of Dismissal pursuant to MCR 3.302, which provides that where an appeal is available, a complaint for Superseding Control must be dismissed. Appellant seeks to have the dismissal reversed.

Appellant argues that the UIAC did not issue a final decision and that without said final decision, he is without means to appeal. This is not correct, as this Court has a copy of the final decision by the UIAC regarding the Appellant's unemployment payment.

Nothing presented before this Court indicates that an appeal was not available to the Appellant. In fact, an appeal was filed in this Court on the same facts as 20-301-AA. Thus, this Court's original dismissal pursuant to MCR 3.302 is AFFIRMED.

THEREFORE IT IS ORDERED that Appellant's Motion to Reverse or Correct Dismissal is DENIED.

In accordance with MCR 2.602(A)(3), the Court finds that this Order disposes of the last pending claim, and closes this case.

Rule 14.1(i)(ii) Administrative Agency Opinion and Order

**APPENDIX E
ADMINISTRATIVE LAW JUDGE AFFIRMED
MICHIGAN UNEMPLOYMENT INSURANCE
AGENCY DENIAL OF BENEFITS**

December 4, 2017

No. 17-024033

STATE OF MICHIGAN, MICHIGAN
ADMINISTRATIVE HEARING SYSTEM

JAMES E. WHITE, Claimant

MICH ST UNIVER UNMPL COMP DIV,
Employer

ORDER

The Agency's October 9, 2017 Redetermination is affirmed.

Claimant is ineligible for benefits for week ending September 30, 2017, pursuant to the remuneration offset provisions of Sections 27(c) and 48(2) of the Michigan Employment Security Act (Act).

JURISDICTION

On November 5, 2017, claimant timely appealed an October 9, 2017 Unemployment Insurance Agency (Agency) Redetermination, which held him ineligible for benefits for week ending September 30, 2017 under the remuneration offset provisions of Sections 27(c) and 48 of the Michigan Employment Security Act (Act).

ISSUE

Whether claimant is ineligible for benefits for week ending September 30, 2017 under the remuneration

and earning offset provisions of Sections 27(c) and 48(2) of the Act.

APPLICABLE LAW

Section 27(c) of the Act provides: [MCL 421.27(C)]

Subject to subsection (f), all of the following apply to eligible individuals:

(1) Each eligible individual shall be paid a weekly benefit rate with respect to the week for which the individual earns or receives no remuneration. Notwithstanding the definition of week in section 50, if within 2 consecutive weeks in which an individual was not unemployed within the meaning of section 48 there was a period of 7 or more consecutive days for which the individual did not earn or receive remuneration, that period is considered a week for benefit purposes under this act if a claim for benefits for that period is filed not later than 30 days after the end of the period.

(2) The weekly benefit rate is reduced with respect to each week in which the eligible individual earns or receives remuneration at the rate of 40 cents for each whole \$1.00 of remuneration earned or received during that week. Beginning October 1, 2015, an eligible individual's weekly benefit rate is reduced at the rate of 50 cents for each whole \$1.00 of remuneration in which the eligible individual earns or receives remuneration in that benefit week. The weekly benefit rate is not reduced under this subdivision for remuneration received for on-call or training

services as a volunteer firefighter, if the volunteer firefighter receives less than \$10,000 .00 in a calendar year for services as a volunteer firefighter.

(3) An individual who receives or earns partial remuneration may not receive a total of benefits and earnings that exceeds 1-3/5 times his or her weekly benefit amount. For each dollar of total benefits and earnings that exceeds 1-3/5 times the individual's weekly benefit amount, benefits shall be reduced by \$1.00. Beginning October 1, 2015, the total benefits and earnings for an individual who receives or earns partial remuneration may not exceed 1-1/2 times his or her weekly benefit amount. The individual's benefits are reduced by \$1.00 for each dollar by which the total benefits and earnings exceed 1-1/2 times the individual's weekly benefit amount.

(4) If the reduction in a claimant's benefit rate for a week in accordance with subdivision (2) or (3) results in a benefit rate greater than zero for that week, the claimant's balance of weeks of benefit payments shall be reduced by 1 week.

(5) All remuneration for work performed during a shift that terminates on 1 day but that began on the preceding day shall be considered to have been earned by the eligible individual on the preceding day.

* * *

(7) The unemployment agency shall not use prorated quarterly wages to establish a reduction in benefits under this subsection.

Section 48 of the Act provides: [MCL 421.48]

(1) An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate, except that for payable weeks of benefits beginning after the effective date of the amendatory act that added section 15a and before October 1, 2015, an individual is considered unemployed for any week or less of full-time work if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate. However, any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of the individual's employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and section 27(c). The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency. For the purposes of this act, an individual's weekly benefit rate means the weekly benefit rate determined pursuant to section 27(b).

(2) All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding SUB payments as described in section 44, shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be *allocated*, then for the period designated by the employing unit or former employing unit. ***However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section. (Petitioner emphasis)***

Claimant has the burden of proving his eligibility for benefits. *Dwyer v Unemployment Compensation Comm*, 321 Mich 178 (1948).

FINDINGS OF FACT

Claimant has been and remains employed with the above-employer as an IT Technologist. He was temporarily laid off August 31, 2017, returning to

work on October 26, 2017. Claimant filed a claim for unemployment benefits, and established a benefit year commencing September 3, 2017. On September 29, 2017, without claimant having requested the payment, the employer paid claimant an amount equal to his regular salary, \$2,604.26 (minus the regular deductions and tax withholding) into his bank account. The payment was charged against his accrued vacation time.

The Agency has applied the payment to week-ending September 30, 2017, which extinguished claimant's eligibility for unemployment benefits for that week. The employer never protested that application by the Agency.

REASONING AND CONCLUSIONS OF LAW

Claimant has the burden of proving his eligibility for benefits for the week at issue: week ending September 30, 2017.

Claimant argues that the vacation pay was earned and accrued prior to his layoff, and should not be available for offset. The employer argues that it is a wage continuation payment, and is subject to offset.

The employer admits that claimant did not request the payment. It says that it followed a longstanding unwritten practice of paying out vacation pay to laid-off employees at the rate of their regular salary, to tide them over during layoffs.

This is not a wage continuation plan. The employer reduced claimant's accrued vacation bank when it made the payment. Whether that is a violation of the collective bargaining agreement is an issue outside the jurisdiction of this forum.

Claimant argues that because the vacation pay was earned prior to his layoff it cannot be used for offset. That interpretation is contrary to the plain language of the statute. Section 48(2) lists the kind of payments that will offset against unemployment benefits. Vacation pay is the first in the list. *All* vacation pay is earned prior to a layoff or separation. To eliminate offset for all vacation pay earned prior to layoff or separation would render the section a nullity.

The employer argues that the payment should have been allocated to more than one week. It concedes that it did not protest the Monetary Determination or subsequent Agency adjudications. It is too late to raise the issue for the first time in this hearing.

Based on the record established in this matter, and the applicable law, the Agency's Redetermination is affirmed.

**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 Michigan Compensation Appellate 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 3, 2018

Rule 14.1(i)(iii) Rehearings (inverse date order)

**APPENDIX F
MICHIGAN SUPREME COURT
SUPERINTENDING CONTROL
RECONSIDERATION DENIAL**

July 28, 2022

No. 163562

Michigan Supreme Court

In re JAMES EDWARD WHITE.

JAMES EDWARD WHITE, Petitioner-Appellant,

v

MICHIGAN STATE UNIVERSITY and
UNEMPLOYMENT INSURANCE APPEALS
COMMISSION, Respondents-Appellees.

Order

On order of the Court, the motion for reconsideration of this Court's May 3, 2022 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

**APPENDIX G
MICHIGAN SUPREME COURT DENIAL OF
BENEFITS RECONSIDERATION DENIAL**

July 28, 2022

No. 163548

Michigan Supreme Court

JAMES EDWARD WHITE, Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMPENSATION DIVISION
and UNEMPLOYMENT INSURANCE AGENCY,
Defendants-Appellees.

Order

On order of the Court, the motion for reconsideration of this Court's May 3, 2022 order is considered, and it is DENIED, because we are not persuaded that reconsideration of our previous order is warranted. MCR 7.311(G).

APPENDIX H
MICHIGAN SUPREME COURT LEAVE TO
APPEAL SUPERINTENDING CONTROL
DENIAL

May 3, 2022

No. 163562

Michigan Supreme Court

In re JAMES EDWARD WHITE

JAMES EDWARD WHITE, Petitioner-Appellant,

v

MICHIGAN STATE UNIVERSITY and
UNEMPLOYMENT INSURANCE APPEALS
COMMISSION, Respondents-Appellees.

Order

On order of the Court, the application for leave to appeal the June 15, 2021 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX I
MICHIGAN SUPREME COURT LEAVE TO
APPEAL DENIAL OF BENEFITS DENIAL

May 3, 2022

No. 163548

Michigan Supreme Court

JAMES EDWARD WHITE, Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMPENSATION DIVISION,
Defendant-Appellee.

Order

On order of the Court, the application for leave to appeal the June 15, 2021 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

APPENDIX J
MICHIGAN COURT OF APPEALS LEAVE TO
APPEAL SUPERINTENDING CONTROL
RECONSIDERATION DENIAL

August 11, 2021

No. 356364

Court of Appeals, State of Michigan

IN RE James Edward White

ORDER

The motion for reconsideration is DENIED.

**APPENDIX K
MICHIGAN COURT OF APPEALS LEAVE TO
APPEAL DENIAL OF BENEFITS
RECONSIDERATION DENIAL**

August 11, 2021

No. 356513

Court of Appeals, State of Michigan

James Edward White v Michigan State Univ
Unemployment Compensation Division

ORDER

The motion for reconsideration is DENIED.

**APPENDIX L
MICHIGAN COURT OF APPEALS LEAVE TO
APPEAL DENIAL OF BENEFITS DENIAL**

June 15, 2021

No. 356513

Court of Appeals, State of Michigan

James Edward White v Michigan State Univ
Unemployment Compensation Division

ORDER

The application for leave to appeal is DENIED
for lack of merit in the grounds presented.

**APPENDIX M
MICHIGAN COURT OF APPEALS LEAVE TO
APPEAL SUPERINTENDING CONTROL
DENIAL**

June 15, 2021

No. 356364

Court of Appeals, State of Michigan

In re James Edward White

ORDER

The application for leave to appeal is DENIED
for lack of merit in the grounds presented.

**APPENDIX N
MICHIGAN 30TH CIRCUIT COURT
RECONSIDERATION OF DENIAL OF
BENEFITS**

February 17, 2021

No. 20-301-AE

This reconsideration denial is a copy of Appendix
D with the case number 20-191-AS lined out and the
20-301-AE one written in and the February 17 date
as above. (This entry duplicates Appendix D)

APPENDIX O
MICHIGAN UNEMPLOYMENT APPEALS
COMMISSION DENIAL OF REQUEST TO
REOPEN, REHEAR, OR PERMIT FURTHER
APPEAL OF DENIAL OF BENEFITS

April 30, 2020

No. 17-024033-255373W

STATE OF MICHIGAN UNEMPLOYMENT
INSURANCE APPEALS COMMISSION

JAMES E. WHITE, Claimant,

MICHIGAN STATE UNIVERSITY, Employer.

ORDER DENYING APPLICATION FOR
REOPENING AND REVIEW

This matter is before the Unemployment Insurance Appeals Commission (Commission) upon the application of the claimant for reopening and review by the Commission of its decision dated March 7, 2018. In an order dated February 6, 2019, the Commission denied the claimant's request for rehearing.

Under Section 34 of the Michigan Employment Security Act, the Commission may reopen and review the decision dated March 7, 2018, only if "good cause" has been demonstrated.

The Commission, having read and considered the claimant's application for reopening, is of the opinion that "good cause" for reopening and review has not been demonstrated.

IT IS THEREFORE ORDERED that the claimant's application for reopening is denied.

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before [Jun 01 2020]

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

**APPENDIX P
MICHIGAN COMPENSATION APPELLATE
COMMISSION DENIAL OF REOPENING OF
DENIAL OF BENEFITS**

February 6, 2019 No 17-024033-255373W

STATE OF MICHIGAN, MICHIGAN
COMPENSATION APPELLATE COMMISSION

JAMES E. WHITE, Claimant,

MICHIGAN STATE UNIVERSITY, Employer.

**ORDER DENYING APPLICATION FOR
REOPENING**

This case is before the Michigan Compensation Appellate Commission (Commission) upon application of the claimant for a rehearing by the Commission with respect to its decision dated March 7, 2018. The Commission, having read and considered said application, and having reviewed the record in this matter, is of the opinion that said application should be denied.

IT IS THEREFORE ORDERED that said application shall be and the same is hereby denied.

This order will become final unless a written appeal therefrom is RECEIVED by the clerk of the appropriate circuit court on or before [Mar 08 2019]

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

**APPENDIX Q
MICHIGAN COMPENSATION APPELLATE
COMMISSION DENIAL OF APPEAL FROM
ADMINISTRATIVE LAW JUDGE DECISION
ON DENIAL OF BENEFITS**

March 7, 2018 No. 17-024033-255373W

STATE OF MICHIGAN, MICHIGAN
COMPENSATION APPELLATE COMMISSION

JAMES E. WHITE, Claimant,

MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMPENSATION DIVISION,
Claimant.

**DECISION OF MICHIGAN COMPENSATION
APPELLATE COMMISSION**

This case is before the Michigan Compensation Appellate Commission (Commission) on the claimant's timely appeal from a December 18, 2017 Administrative Law Judge (ALJ) order denying a request for rehearing.

Under Section 33(1) of the Michigan Employment Security Act^{1[12]}, rehearings are

¹² MCL 421.1 *et seq.*

granted or denied at the discretion of the ALJ.
Michigan Administrative Code, Rule 792.11414.

After reviewing the record, the Commission finds that there has not been an abuse of discretion. Therefore, the ALJ's December 18, 2017 order should be affirmed.

The Commission has reviewed the ALJ's December 4, 2017 decision in light of the evidence appearing in the record made prior to the claimant's request for rehearing. It is our opinion that the decision is in conformity with the law and facts and should be affirmed.

In accordance with MCL 421.34, we conclude that no modification or alteration of the ALJ's decision is necessary.

Therefore,

IT IS ORDERED that the ALJ's order denying the claimant's request for rehearing is hereby affirmed.

IT IS FURTHER ORDERED that the ALJ's decision is hereby affirmed.

This decision shall be final unless EITHER (1) the Michigan Compensation Appellate 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: [Apr 06 2018]

TO PROTECT YOUR RIGHTS, YOU MUST BE
ON TIME

**APPENDIX R
ADMINISTRATIVE LAW JUDGE DENIAL OF
REHEARING, RECONSIDERATION ON
DENIAL OF BENEFITS**

December 18, 2017

No. 17-024033

STATE OF MICHIGAN, MICHIGAN
ADMINISTRATIVE HEARING SYSTEM

JAMES E. WHITE

MICH ST UNIVER UNMPL COMP DIV

**ORDER DENYING REQUEST FOR
REHEARING**

On December 15, 2017, claimant requested rehearing of a decision by the undersigned mailed on December 4, 2017.

This matter began as claimant's appeal of an Unemployment Insurance Agency (Agency) Redetermination issued on October 9, 2017. The Redetermination held claimant ineligible for benefits for week ending September 30, 2017 under the remuneration offset provisions of Sections 27(c) and 48(2) of the Act. A telephone hearing was held from Lansing Michigan on November 29, 2017.

The decision affirmed the Redetermination and held the claimant ineligible for benefits for week ending September 30, 2017.

Section 33 of the Act provides that, upon application of an interested party, an appeal may be reheard, affirmed, modified, set aside, or reversed on the basis of the evidence previously submitted in the case, or on the basis of additional evidence, provided

that the application is filed within 30 days of the decision date. Mich Admin Code, R 792.11414, provides that granting a rehearing is within the discretion of the administrative law judge. Upon a showing of good cause, a matter may be reopened or reviewed and a new decision issued after the 30 day appeal period has expired, provided that a request for review shall be made within one year after the date of mailing of the prior decision, pursuant to Section 33 of the Act and R 792.11415.

It is found that the parties had a full opportunity to present witnesses and evidence at the original hearing.

Upon review of the request for rehearing, the file, and the applicable law on the issue, it is found that no new or additional information has been alleged that was not available at the time of the original hearing.

Claimant's request for rehearing is denied.

**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 by January 17, 2018.

APPEAL TO THE MICHIGAN COMPENSATION APPELLATE COMMISSION - To be filed on time, an appeal to the Michigan Compensation Appellate Commission must be **RECEIVED** directly by the Michigan Compensation Appellate Commission, P.O. Box 30475, Lansing MI 48909-7975, (Facsimile: 517-241-7326), within 30 calendar days after the mailing date of this decision (as indicated). Appeals must be

in writing and signed by the appealing party or his/her agent; or APPEAL TO THE CIRCUIT COURT - Upon stipulation in writing, between claimant and employer (or Agents and Attorneys) this decision may be appealed directly to the Circuit Court within 30 calendar days of the date of mailing of the decision or Order, pursuant to Section 38(2) of the MES Act [MCL 421.38(2)].

See Appendix E Administrative Law Judge Affirmed Michigan Unemployment Insurance Agency Denial of Benefits page 50 for ALJ Affirmation of below.

**APPENDIX S
MICHIGAN UNEMPLOYMENT INSURANCE
AGENCY DENIAL OF BENEFITS**

October 9, 2017

Case No. 0-010-634-

324

for Claim C4781329-0

State of Michigan, Talent Investment Agency,
Unemployment Insurance (Wanda Stokes, TIA
Director)

JAMES WHITE, Claimant

MICH ST UNIVER UNEMPL COMP DIV,
Involved Employer

Notice of Redetermination

Issues and Sections of Michigan Employment
Security (MES) Act involved: Remuneration and
27(c) & 48.

You received vacation pay for the week(s) and amount(s) shown.

Your vacation pay is greater than or equal to 1.5 times your weekly benefit amount of \$362.00.

You are ineligible for benefits under MES Act, Secs. 27(c) and 48 beginning September 24, 2017 through September 30, 2017. You will not receive benefit payments during this period.

Pursuant to Section 20(a) if an employer has established a pattern of failing to provide timely or adequate information in response to Agency requests for the purpose of making proper adjudications of claims/issues; the employer's account will not be credited for benefits paid prior to the date that the protest providing timely or adequate information was received.

Calculation of interest and penalty amount is shown later on this form.

If you disagree with this redetermination, refer to "Appeal Rights" on the reverse side of this form.

Benefit Week Paid	Earnings Paid
30-Sep-2017	\$2,356.53
	\$2,356.53

Rule 14.1(v) Relevant Laws and Voluminous Quotes

APPENDIX T
U.S. CONST. PMBL.

We the People of the United States, in Order to form a more perfect Union, *establish Justice*¹³, *insure domestic Tranquility*, provide for the common defence, *promote the general Welfare*, and *secure the Blessings of Liberty* to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

APPENDIX U
U.S. CONST. ART. I, § 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or *grant any Title of Nobility*.

APPENDIX V
U.S. CONST. ART. III, § 2 1

1. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of

¹³ All emphasis in the U.S. Constitution quotes is Petitioner's.

admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State; —between Citizens of different States, — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

APPENDIX W
U.S. CONST. ART. IV § 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

APPENDIX X
U.S. CONST. ART. VI 2 & 3

2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; *and the Judges in every State shall be bound thereby*, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. 3. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and *all executive*

and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

APPENDIX Y
U.S. CONST. AMEND. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX Z
U.S. CONST. AMEND. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; *nor shall private property be taken for public use, without just compensation.*

APPENDIX AA
U.S. CONST. AMEND. IX

The enumeration in the Constitution, of certain rights, *shall not be construed to deny or disparage others retained by the people.*

APPENDIX BB
U.S. CONST. AMEND. X

The *powers* not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, *or to the people.*

APPENDIX CC
U.S. CONST. AMEND. XIV 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

APPENDIX DD
MICHIGAN CONST. OF 1963 ART. 1, § 2

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

APPENDIX EE
MICHIGAN CONST. OF 1963 ART. 6, § 28

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

APPENDIX FF
MICHIGAN CONST. OF 1963 ART. 11, § 1

All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear (or affirm) that I

will support the Constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of according to the best of my ability. No other oath, affirmation, or any religious test shall be required as a qualification for any office or public trust.

APPENDIX GG
MICHIGAN EMPLOYMENT SECURITY ACT
(MCL 421 PREAMBLE)

Act 1 of 1936 (Ex. Sess.): AN ACT to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create certain other funds; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to levy and provide for obligation assessments; to provide for the collection of those contributions and assessments; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to furnish certain information to certain governmental agencies for use in administering public benefit and child support programs and investigating and prosecuting fraud; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessments; and for referees and a board of review to hear and decide the issues arising from

redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make appropriations for carrying out the provisions of this act; to prescribe remedies and penalties for the violation of this act; and to repeal all acts and parts of acts inconsistent with this act.

APPENDIX HH MCL 421.4(1)

(1) The bureau may promulgate rules and regulations that it determines necessary, and that are not inconsistent with this act, to carry out this act.

APPENDIX II MCL 421.27(C)

See MCL 421.27(C) on page 51.

**APPENDIX JJ
MCL 421.33**

(1) An appeal from a redetermination issued by the agency in accordance with section 32a or a matter transferred for hearing and decision in accordance with section 32a shall be referred to the Michigan administrative hearing system for assignment to an

administrative law judge. If the agency transfers a matter, or an interested party requests a hearing before an administrative law judge on a redetermination, ***all matters pertinent to the claimant's benefit rights or to the liability of the employing unit under this act shall be referred to the administrative law judge.*** The administrative law judge shall afford all interested parties a reasonable opportunity for a fair hearing and, unless the appeal is withdrawn, the administrative law judge shall decide the rights of the interested parties and shall notify the interested parties of the decision, setting forth the findings of fact upon which the decision is based, together with the reasons for the decision. With respect to an appeal from a denial of redetermination, if the administrative law judge finds that there was good cause for the issuance of a redetermination, the denial shall be a redetermination affirming the determination and the appeal from the denial shall be an appeal from that affirmance. Unless an interested party would be unduly prejudiced, an administrative law judge may consolidate cases involving the same or substantially similar evidence or issues, hear the consolidated cases at the same date and time, create a single record of proceedings, and consider evidence introduced in 1 of those cases in the other cases. If the appellant fails to appear or prosecute the appeal, the administrative law judge may dismiss the proceedings or take other action considered advisable. An administrative law judge may, either upon application for rehearing by an interested party or on his or her own motion, proceed to rehear, affirm, modify, set aside, or reverse a prior decision on the basis of the evidence previously

submitted in the case, or on the basis of additional evidence. The application or motion shall be made within 30 days after the date of mailing of the decision. The administrative law judge may, for good cause, reopen and review a prior decision and issue a new decision after the 30-day appeal period has expired. A request for review shall be made within 1 year after the date of mailing of the prior decision. An administrative law judge shall not participate in a case in which he or she has a direct or indirect interest.

(2) Within 30 days after the mailing of a copy of a decision of the administrative law judge or of a denial of a motion for rehearing, an interested party may file *an appeal* to the Michigan compensation appellate commission, and unless such an appeal is filed, the decision or denial by the administrative law judge is final.

APPENDIX KK
MCL 421.34

(1) The Michigan compensation appellate commission created in Executive Reorganization Order No. 2011-6, MCL 445.2032, has full authority to handle, process, and decide appeals filed under section 33(2).

(2) An *appeal* to the Michigan compensation appellate commission from the findings of fact and decision of the administrative law judge or from a denial by the administrative law judge of a motion for a rehearing or reopening shall be a matter of right by an interested party. The Michigan

compensation appellate commission, on the basis of evidence previously submitted and additional evidence as it requires, shall affirm, modify, set aside, or reverse the findings of fact and decision of the administrative law judge or a denial by the administrative law judge of a motion for rehearing or reopening.

(3) The agency is an interested party in a matter before an administrative law judge, the Michigan compensation appellate commission, or a court, but notice of hearing is not required to be provided to the agency for a hearing before an administrative law judge or the Michigan compensation appellate commission.

(4) The Michigan compensation appellate commission shall conduct an oral hearing in a matter before it only after an application for the hearing is made by an interested party and the application is approved by 2 or more members of the Michigan compensation appellate commission assigned to review the appeal. If an application for an oral hearing is not approved, the Michigan compensation appellate commission may consider a written argument if an application for written argument is approved by 2 or more members of the Michigan compensation appellate commission assigned to review the appeal and all parties are represented or all parties agree that written argument should be considered. If neither an oral hearing is held nor written argument considered, the Michigan compensation appellate commission shall decide the case on the record before the administrative law judge.

(5) The Michigan compensation appellate commission, in its discretion, may omit the basis for its decision in cases in which it affirms the decision of an administrative law judge without alteration or modification.

(6) If the appellant fails to appear, the Michigan compensation appellate commission may dismiss the proceedings or take other action it considers advisable.

(7) The Michigan compensation appellate commission may, either upon application by an interested party for rehearing or on its own motion, proceed to rehear, affirm, modify, set aside, or reverse a prior decision on the basis of the evidence previously submitted in that case, or on the basis of additional evidence if the application or motion is made within 30 days after the date of mailing of the prior decision. The Michigan compensation appellate commission may, for good cause, reopen and review a prior decision of the Michigan compensation appellate commission and issue a new decision after the 30-day appeal period has expired, but a review shall not be made unless the request is filed with the Michigan compensation appellate commission, or review is initiated by the Michigan compensation appellate commission with notice to the interested parties, within 1 year after the date of mailing of the prior decision. ***Unless an interested party, within 30 days after mailing of a copy of a decision of the Michigan compensation appellate commission or of a denial of a motion for a rehearing, files an appeal from the decision or denial, or seeks***

judicial review as provided in section 38, the decision shall be final.

(8) *The Michigan compensation appellate commission may* on its own motion affirm, modify, set aside, or reverse a decision or order of an administrative law judge on the basis of the evidence previously submitted in the case; direct the taking of additional evidence; or *permit a party to the decision or order to initiate further appeals before it.* The Michigan compensation appellate commission shall permit a further appeal by a party interested in a decision or order of an administrative law judge or by the Michigan compensation appellate commission if its initial ruling has been overruled or modified. The Michigan compensation appellate commission may remove to itself or direct the Michigan administrative hearing system to transfer to another administrative law judge the proceedings on appeal, rehearing, or review pending before an administrative law judge. The Michigan compensation appellate commission shall promptly notify the interested parties of its findings and decisions.

(9) A member of the Michigan compensation appellate commission may administer oaths and take depositions.

(10) The testimony at a hearing before an administrative law judge or the Michigan compensation appellate commission shall be recorded, but need not be transcribed unless requested by the majority of the panel of the Michigan compensation appellate commission assigned to hear the claim. If an interested party wants a copy of a transcript of a hearing held before

an administrative law judge or the Michigan compensation appellate commission, an interested party may request and shall be provided a transcript. An interested party who requests a transcript is responsible for the cost of the transcript.

(11) The manner in which an appeal to an administrative law judge and the Michigan compensation appellate commission shall be presented, the appeal reports required from an interested party, and the procedure governing the appeal shall be in accordance with rules promulgated by the Michigan administrative hearing system. (*Petitioner emphasis*)

APPENDIX LL
MCL 421.38

(1) *The circuit court* in the county in which the claimant resides or the circuit court in the county in which the claimant's place of employment is or was located, or, if a 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, *may review questions of fact and law* on the record made before the administrative law judge and the Michigan compensation appellate commission *involved in a final order or decision* of the Michigan compensation appellate commission, and may make further orders in respect to that order or decision *as justice may require*, but the court may reverse an order or decision only *if it finds that the order or decision is contrary to law* or is not supported by competent, material, and

substantial evidence on the whole record.
Application for review shall be made within 30 days after the mailing of a copy of the order or decision by any method permissible under the rules and practices of the circuit court of this state.

(2) An order or decision of an administrative law judge that involves a claim for unemployment benefits may be appealed directly to the circuit court if the claimant and the employer or their authorized agents or attorneys agree to do so by written stipulation filed with the administrative law judge. An administrative law judge's order or decision involving an employer's contributions or payments in lieu of contributions under this act may be appealed directly to the circuit court based on a written stipulation agreeing to the direct appeal to the circuit court.

(3) The unemployment agency is a party to any judicial action involving an order or decision of the Michigan compensation appellate commission or an administrative law judge.

(4) The decision of the circuit court may be appealed in the manner provided by the laws of this state for appeals from the circuit court. (*Petitioner emphasis*)

APPENDIX MM
MCL 421.48(1) & (2)

See **MCL 421.48(1)** on page 53 and **(2)** on page 54.

**APPENDIX NN
MICHIGAN ADMIN. CODE R. 421.270 GOOD
CAUSE FOR RECONSIDERATION AND
REOPENING.**

(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.

(2) If, before the start of an initial hearing before the office of appeals, the agency receives new, additional, or corrected information or discovers an administrative clerical error in the claim, the matter may be returned to the agency for reconsideration and redetermination. ***(Petitioner emphasis)***

**APPENDIX OO
MICHIGAN ADMIN. CODE R. 421.302
VACATION PAY.**

When an employer is entitled to designate, pursuant to section 48 of the Michigan employment security act, vacation pay to a period of layoff, forced vacation, or other separation, the employer shall either deliver to the affected employee and to the employee's bargaining representative, if any, on or before the employee's last day of work, written notice of such designation stating that such designation may render the employee ineligible for unemployment benefits during the designated period or shall post such notice conspicuously in easily accessible places frequented by employees and deliver a copy thereof to the employee's bargaining representative, if any. However, as to an individual laid off prior to the time of designation, posting of the notice shall not substitute for the requirement of

delivery of the notice to such individual by mail.
(*Petitioner emphasis*)

APPENDIX PP
MICHIGAN ADMIN. CODE R. 792.11418
APPEAL; DEADLINE; PROCEDURE FOR
LATE APPEAL.

- (1) An appeal to the Michigan compensation appellate commission shall be received at the office of the Michigan compensation appellate commission.
- (2) *To be received on time, an appeal to the Michigan compensation appellate commission must be received within 30 days after the mailed date the administrative law judge's decision, order denying rehearing or reopening.*
- (3) The Michigan compensation appellate commission is without jurisdiction to consider the merits of any appeal received after the 30-day appeal period. A party whose appeal is received by the Michigan compensation appellate commission after the 30-day appeal period may request a reopening by the administrative law judge under R 792.11405, assuming the request is received within 1 year of the date of mailing of the administrative law judge's decision. The administrative law judge's decision or order on the reopening request may then be appealed to the Michigan compensation appellate commission.
- (4) An appeal or request for rehearing or reopening to the Michigan compensation appellate commission may be made by personal service, postal delivery, facsimile transmission, or other electronic means as

prescribed by the Michigan compensation appellate commission. If an appeal or request is made by facsimile transmission, the following will be presumed:

(a) That the facsimile transmission was received on time if it was received by the Michigan compensation appellate commission not later than the last minute of the day of the applicable deadline as provided in these rules under prevailing Michigan time.

(b) That the facsimile transmission was received on the date and at the time electronically entered or printed on the face of the document, subject to verification by the Michigan compensation appellate commission at its discretion. (*Petitioner's emphasis*)

APPENDIX QQ
MICHIGAN ADMIN. CODE R. 792.11419
COMMISSION; DECISION BASED ON
RECORD; NOTICE.

(1) The Michigan compensation appellate commission may decide cases on the record made by the administrative law judge, without any of the following:

(a) Oral argument before it.

(b) Additional evidence.

(c) Consideration of written argument.

(2) The record made by the administrative law judge includes the transcript or recording of the hearing,

accurate copies of exhibits clearly marked and received at the administrative law judge hearing, and written argument submitted to the administrative law judge if the other parties present at the hearing have been served a copy of the argument and have been given an adequate opportunity to respond to it.

(3) The Michigan compensation appellate commission *shall serve a notice of receipt of appeal* on all parties. The notice of receipt of appeal shall inform parties of the right to request all of the following:

- (a) Oral argument.
- (b) Opportunity to submit additional evidence.
- (c) Opportunity to submit written argument.

**APPENDIX RR
MICHIGAN ADMIN. CODE R. 792.11429
MICHIGAN COMPENSATION APPELLATE
COMMISSION; DECISION OR ORDER;
COPIES; NOTICE OF RIGHTS OF APPEAL.**

(1) The Michigan compensation appellate commission shall issue written decisions or orders that are signed and dated. *The Michigan compensation appellate commission need not provide any explanation or reasons for its decision or order when it affirms an administrative law judge's decision without substantive alteration or modification.*

(2) Decisions of the Michigan compensation appellate commission shall contain the rights of appeal pursuant to R 792.1442. (Petitioner note: 1442 should be 11432 included below, no 1442 exists. Petitioner emphasis)

**APPENDIX SS
MICHIGAN ADMIN. CODE R. 792.11430
REHEARING OF MICHIGAN COMPENSATION
APPELLATE COMMISSION'S DECISION.**

(1) A request for a rehearing of a Michigan compensation appellate commission decision shall be received by the Michigan compensation appellate commission within 30 days after the mailed date of the decision. A party requesting a rehearing shall serve the request on all other parties at the time of filing with the Michigan compensation appellate commission.

(2) The Michigan compensation appellate commission may grant rehearing on its own motion.

(3) Granting a rehearing is within the discretion of the Michigan compensation appellate commission.

(4) If a request for rehearing is denied, both the denial and the Michigan compensation appellate commission's decision may be appealed to the appropriate circuit court pursuant to section 38 of the act, MCL 421.38.

(5) A rehearing request received more than 30 days after the mailed date of the decision shall be treated as a request for reopening. (Petitioner emphasis)

APPENDIX TT
MICHIGAN ADMIN. CODE R. 792.11431
REOPENING AND REVIEW OF MICHIGAN
COMPENSATION APPELLATE
COMMISSION'S DECISION.

- (1) A request for a reopening and review of the Michigan Compensation appellate commission's decision shall be received by the Michigan compensation appellate commission within 1 year, but not more than 30 days after the mailed date of decision.
- (2) Reopening will be granted only if good cause is established. If the Michigan compensation appellate commission grants reopening, the order or decision allowing reopening shall contain a statement of the basis of the good cause finding. If the Michigan compensation appellate commission denies reopening, the order denying reopening shall contain a statement of the basis for the denial.
- (3) The Michigan compensation appellate commission may grant reopening on its own motion, with notice to the parties, within 1 year after the mailed date of the decision.
- (4) If the Michigan compensation appellate commission grants a request for reopening, it shall decide the underlying issues of the case based on the record already made and any additional evidence the Michigan compensation appellate commission may enter in the record.
- (5) If the Michigan compensation appellate commission denies a request for reopening, both the

denial of reopening and the initial decision may be appealed to the appropriate circuit court under section 38 of the act, MCL 421.38.

APPENDIX UU
MICHIGAN ADMIN. CODE R. 792.11432
NOTICE OF RIGHTS OF APPEAL.

(1) Each Michigan compensation appellate commission decision or final order shall notify the parties of all of the following:

(a) A party has the right to make a timely appeal of a decision or final order of the Michigan compensation appellate commission to a circuit court.

(b) A party may make a timely request to the Michigan compensation appellate commission to rehear a decision.

(c) A party may make a timely request to the Michigan compensation appellate commission, subject to a showing of good cause, to reopen and review a decision.

*(2) Each Michigan compensation appellate commission decision or final order shall state the deadlines and places of receipt of the alternatives in subrule (1) of this rule. It shall also state in boldface type: "TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME."
(Petitioner emphasis)*

APPENDIX VV
MCR 2.625(A)(1) TAXATION OF COSTS

(A) Right to Costs. (1) In General. Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.

APPENDIX WW
MCR 2.625(B)(2) PREVAILING PARTY

(B) Rules for Determining Prevailing Party. (2) Actions With Several Issues or Counts. In an action involving several issues or counts that state different causes of action or different defenses, the party prevailing on each issue or count may be allowed costs for that issue or count. *If there is a single cause of action alleged, the party who prevails on the entire record is deemed the prevailing party. (Petitioner's emphasis)*

APPENDIX XX
MCR 2.625(B)(4) PREVAILING PARTY COSTS

(B) Rules for Determining Prevailing Party. (4) Costs on Review in Circuit Court. An appellant in the circuit court who improves his or her position on appeal is deemed the prevailing party. *(Petitioner's emphasis)*

APPENDIX YY
MCR 3.302 SUPERINTENDING CONTROL

(A) Scope. A superintending control order enforces the superintending control power of a court over lower courts or tribunals.

(B) Policy Concerning Use. If another adequate remedy is available to the party seeking the order, a complaint for superintending control may not be filed. See subrule (D)(2), and MCR 7.101(A)(2), and 7.306(A).

(C) Writs Superseded. A superintending control order replaces the writs of certiorari and prohibition and the writ of mandamus when directed to a lower court or tribunal.

(D) Jurisdiction.

(1) The Supreme Court, the Court of Appeals, and the circuit court have jurisdiction to issue superintending control orders to lower courts or tribunals.

(2) When an appeal in the Supreme Court, the Court of Appeals, or the circuit court is available, that method of review must be used.
If superintending control is sought and an appeal is available, the complaint for superintending control must be dismissed.

(E) Procedure for Superintending Control in Circuit Court.

(1) Complaint. A person seeking superintending control in the circuit court must file a complaint with the court. Only the plaintiff's name may appear in

the title of the action (for example, In re Smith). The plaintiff must serve a copy of the complaint on the court or tribunal over which superintending control is sought. If the superintending control action arises out of a particular action, a copy of the complaint must also be served on each other party to the proceeding in that court or tribunal.

(2) Answer. Anyone served under subrule (E)(1) may file an answer within 21 days after the complaint is served.

(3) Issuance of Order; Dismissal.

(a) After the filing of a complaint and answer or, if no answer is filed, after expiration of the time for filing an answer, the court may

(i) issue an order to show cause why the order requested should not be issued,

(ii) issue the order requested, or

(iii) dismiss the complaint.

(b) If a need for immediate action is shown, the court may enter an order before an answer is filed.

(c) The court may require in an order to show cause that additional records and

documents be filed.

(d) An order to show cause must specify the date for hearing the complaint.

**APPENDIX ZZ
MCR 7.102 RE APPEAL**

For purposes of this subchapter:

(1)“agency” means any governmental entity other than a “trial court,” the decisions of which are subject to appellate review in the circuit court;

(2)“*appeal*” means judicial review by the circuit court of a judgment, order, or decision of a “trial court” or “agency,” even if the statute or constitutional provision authorizing circuit court appellate review uses a term other than “appeal.” “Appeal” does not include actions commenced under the Freedom of Information Act, MCL 15.231 et seq., *proceedings described in MCR 3.302* through MCR 3.306, and motions filed under MCR 6.110(H);

**APPENDIX AAA
EXCERPT FROM JULY 6, 2021 COURT OF
APPEALS RECONSIDERATION OF 356364,
STANDARDS OF REVIEW**

Unfortunately Plaintiff finds no clear statement in prior cases that deals nicely with the issue of whether or not a government unit can shirk its duty then, when presented with the option of performing it “on its own” or doing it under deliberate order of a court with superintending control, can fulfil its duty “on its own” and thereby avoid the sanction of costs. Unfortunately Plaintiff finds no clear guidance in the Michigan Court Rules either therefore basic justice, logic, and common sense are presented as the standard. Does “prevail” need *de novo*

interpretation? Has the 30th Circuit Court Judge made a clear error that unjustly affects “costs” or just not yet acted? Or is the Judge abusing discretion in not addressing motions for a “dismissed” case?

From *Saroki v. City of Detroit*, 73 Mich. App. 519, 252 N.W.2d 234 (Mich. Ct. App. 1977)

Administrative agencies must be governed by adequate standards and guidelines. The laws of the state and its subparts cannot leave people unprotected from uncontrolled, arbitrary power in the hands of administrative officials. *Dept of Natural Resources v Seaman*, 396 Mich 299, 308, 309; 240 NW2d 206 (1976). See, *Osius v St Clair Shores*, 344 Mich 693; 75 NW2d 25 (1956), *State Highway Commission v Vanderkloot*, 392 Mich 159; 220 NW2d 416 (1974).

Applicable Michigan Constitution provisions, laws, rules, etc.

Michigan Constitution Article VI § 10
Jurisdiction, practice and procedure of court of appeals. Sec. 10. The jurisdiction of the court of appeals shall be provided by law and the practice and procedure therein shall be prescribed by rules of the supreme court.

MCR 7.216 Miscellaneous Relief (A) Relief Obtainable. The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just:

- (1) exercise any or all of the powers of amendment of the trial court or tribunal;

(3) permit amendment or additions to the grounds for appeal;

(6) draw inferences of fact;

(7) enter any judgment or order or grant further or different relief as the case may require;

(9) direct the parties as to how to proceed in any case pending before it;

MCL 600.2421b(3) "Prevailing party" means as follows: (b) In an action involving only 1 issue or count stating only 1 cause of action or defense, the party prevailing on the entire record.

MCL 600.2421c(1) The court that conducts a civil action brought by or against the state as a party, except for a civil infraction action, shall award to a prevailing party other than the state the costs and fees incurred by that party in connection with the civil action, if the court finds that the position of the state to the civil action was frivolous. To find that the state's position was frivolous, the court shall determine that at least 1 of the following conditions has been met:

(a) The state's primary purpose in initiating the action was to harass, embarrass, or injure the prevailing party.

(b) The state had no reasonable basis to believe that the facts underlying its legal position were in fact true.

(c) The state's legal position was devoid of arguable legal merit.

MCR 2.625(A) Right to Costs.

(1) In General. Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.

(2) Frivolous Claims and Defenses. In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.

MCR 2.625(B) Rules for Determining Prevailing Party.

(2) ... If there is a single cause of action alleged, the party who prevails on the entire record is deemed the prevailing party.

From *Matter of Staff Employees*, 406 Mich. 647, 281 N.W.2d 299 (Mich. 1979)

It is elementary that in Michigan government the legislative, executive and judicial branches are separate and co-equal. *In re 1976 PA 267*, 400 Mich 660, 662-663; 255 NW2d 635 (1977). Article 3, § 2 makes this clear and specific. It reads:

"The powers of government are divided into three branches; legislative, executive and judicial. *No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this*

constitution." (Emphasis added.) [Plaintiff
note: emphasis in original]

From *Krane v. Krane (In re Estate of Helen M. Krane Trust)*, No. 312236 (Mich. Ct. App. Feb. 4, 2014)

"Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney." MCL 600.2591(1). A defense to a civil action is frivolous if "[t]he party's primary purpose in . . . asserting the defense was to harass, embarrass, or injure the prevailing party[.]" or "[t]he party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true[.]" or "[t]he party's legal position was devoid of arguable legal merit." MCL 600.2591(3)(a).

From *Citizens Insurance Co. of America v. Juno Lighting, Inc.*, 247 Mich. App. 236, 635 N.W.2d 379 (Mich. Ct. App. 2001)

Generally, costs are allowed to the prevailing party. MCR 2.625(A)(1); *Ullery v. Sobie*, 196 Mich. App. 76, 82-83, 492 N.W.2d 739 (1992). In order to be considered the prevailing party, defendant was required to show *at the very least that its position was improved by the litigation. Ullery, supra. (emphasis added, same must apply for a plaintiff)*

Rule 14.1(vi) Other Essential Material

**APPENDIX BBB
JULY 7, 2017 LAYOFF LETTER**

James White
International Studies and Programs Dean

Dear James:

It is with regret that I am writing to inform you that your department has notified Human Resources that it will be necessary to initiate a layoff for your position, resulting in your being placed on layoff status effective August 31, 2017. Your last day of Work in your current position will be Wednesday August 30, 2017. You will be continued on the payroll beyond that date to the extend of your vacation accrual. Please note that your continuation on the payroll may render you ineligible for unemployment benefits during the period of this continuation.

Please contact Ms. Kristie Sova in Human Resources at 517-884-0117, who will schedule an appointment to meet with you to explain layoff procedures and to discuss your options for possible reassignment at MSU.

We regret the necessity of this action and urge you to contact us immediately so that we can begin to explore reassignment possibilities. Our office is

committed to providing active support and assistance to you in this process.

Sincerely,

/s/ Signature

Queen McMiller
Sr. Human Resources Professional/S
MSU Human Resources

Cc: Administrative Professional Association

**APPENDIX CCC
SEPTEMBER 25, 2017, UIA SYSTEM (BY
PETITIONER)**

(A copy of the message can be found at page 130 of the July 30, 2020 Appellants Appendix for case 20-301-AE-C30)

Sent: Monday, Sep 25, 2017 4:37:45 PM

Subject: Vacation Certification Questionnaire

New message since I cannot see and edit the prior message. After some more experimenting I withdrew the vacation pay questionnaire certification since it is completely impossible at this time to answer its first required date question. Maybe it will be possible within the 10 days, maybe not. In any event, I'm now certain that MSU has not paid any vacation benefits yet. Whether they will or not is a different question. I can see that they have zeroed my vacation hours balance. MSU states their policy is to pay immediately (but not too immediately I gather) after the layoff but the union contract, as I read it,

requires delay until actual termination occurs and that a lay off is not a termination.

**APPENDIX DDD
OCTOBER 3, 2017, UIA SYSTEM (BY UIA,
PETITIONER'S ANSWERS)**

(Omitted from Certified Record. A copy of the questionnaire with answers can be found at page 127 of the July 30, 2020 Appellants Appendix for case 20-301-AE-C30)

[Employee] Vacation Pay Questionnaire October 3, 2017

What date was the vacation pay issued? 29 Sep 2017

What is the beginning date of the period the vacation pay covers? 01 Feb 2017

What is the ending date of the period the vacation pay covers? 30 Aug 2017

Was the vacation payment issued based on a contract or other agreement, such as, company policy? If so, provide a copy. No

Did your employer post or deliver a written notice to you or your bargaining unit (union) prior to your last day of work before the vacation period that your vacation pay is allocated and could make you ineligible for unemployment benefits for a specific time period? No

What was the gross dollar amount of the vacation pay? 1,956.99

Did you have the option of receiving vacation pay instead of taking time off? No

Did you request a vacation for this period of time? No

Are other employees receiving vacation pay to cover the same time period? No

**APPENDIX EEE
OCTOBER 3, 2017, UIA SYSTEM, VACATION
QUESTIONNAIRE FOLLOW-UP (BY
PETITIONER)**

(Omitted from Certified Record. A copy can be found in the July 30, 2020 Appellants Appendix for case 20-301-AE-C30 on page 132)

Sent: Tuesday, Oct 3, 2017 9:52:31 AM

Subject: Vacation Pay - Supplemental Information

I can't pretend I know how to put yes or no answers correctly to some of the questions in the Vacation Pay Questionnaire. I've done the best I could with my memory, the facts available to me, and any logic skills for understanding that I possess. Per the APA union contract with MSU vacation pay is earned each month and, in my case, at the rate of 16 hours a month. Also per the APA union contract vacation pay is to be paid in cash only upon employee termination, not on separation due to layoff. In other words,

MSU should not be using a vacation-pay-on-layoff policy with APA represented members. MSU did give me a paper in relation to the layoff that states that their policy is to pay for unused vacation at the time of layoff at the time of layoff. They DO NOT state in that policy that it is to be used to reduce the employee's eligibility for unemployment or that it is an attempt to reduce their obligation to pay for unemployment insurance. The complete statement I received (on the paper I have and I recall seeing no other) is "Vacation time accrued as of layoff date, will be paid out during the period immediately following the last day worked."

Also I note that the "Unemployment Benefits in Michigan: A Handbook for Unemployed Workers"

(http://www.michigan.gov/documents/uia_UC1901_76146_7.pdf?20141104082801) very explicitly states that any earnings noted for unemployment certification must be for the period being certified. The vacation "pay" was clearly earned prior to the September date on which a payment was made.

**APPENDIX FFF
OCTOBER 9, 2017, UIA SYSTEM, INFORMAL
RULES REQUEST (BY PETITIONER)**

(Omitted from Certified Record. A copy can be found in the July 30, 2020 Appellants Appendix for case 20-301-AE-C30 on page 133. Note: the "Notice of Redetermination" that this is in response to can be found as Appendix S)

Sent: Monday, Oct 9, 2017 9:10:32 AM

Subject: Informal rules request

Per Letter ID: L0040400138

(https://miwam.unemployment.state.mi.us/mip/w ebdoc/_/Retrieve/0/f-

[/_uJxVBu1ifPomY_CYe24xQ__?FILE__=TAPVIE WMAIL](#)) I've been informed that benefits for the week of September 30 have been denied. I find nothing in the law

([http://www.legislature.mi.gov/\(S\(zosss4kpg2lsr mkxowfk0pd1\)\)/documents/mcl/pdf/mcl- chap421.pdf](http://www.legislature.mi.gov/(S(zosss4kpg2lsr mkxowfk0pd1))/documents/mcl/pdf/mcl- chap421.pdf)) or the published rules

(http://www.michigan.gov/documents/uia/Admini strative_Rules_505959_7.pdf) that support that

denial therefore I would much appreciate it if you would, as required by Michigan Law 421.4.

(2), provide me with a complete copy of the UIA's "informal rules" ASAP so that I can fully

understand the rejection and thereby properly

prepare my appeal. (*See UIA Response in Appendix HHH*)

APPENDIX GGG

**OCTOBER 9, 2017, UIA SYSTEM, PROTEST
DENIAL OF BENEFITS TO UIA (BY
PETITIONER)**

(Included in Certified Record page R46, a clear copy can also be found at page 129 of the July 30, 2020 Appellants Appendix for case 20-301-AE-C30)

October 9, 2017 Plaintiff Submission to UIA

The denial of benefits for the week of 30-Sept 2017 is being appealed as incorrect.

The reasons stated in the UIA denial (Letter ID L0040400138) merely noted MES Section 27(c) & 48 and claimed that I received “vacation pay” *for* [emphasis added] the week of September 24, 2017 through September 30, 2017. I have twice requested that the UIA provide me with a copy of the informal rules that they use to determine that I received any “vacation pay” *for* said week and, contrary to Michigan law, the UIA has provided no informal rules at all for reaching their decision. It is true that Michigan State University (contrary to their contract [<https://hr.msu.edu/contracts/documents/APA2015-2019.pdf> subsection 171] with the Administrative Professionals Association (APA) union) did make a “vacation pay” payment to my bank account on September 29, 2017 but it was *for* vacation earned and accrued to my vacation account (though not used) over the period of February 1, 2017 through August 30, 2017 (my last day of work).

MES 27(c) “Subject to subsection (f), all of the following apply to eligible individuals: (1) Each eligible individual must be paid a weekly benefit rate with respect to the week *for* [emphasis added] which the individual earns or receives no remuneration.”

Or to state it with the clauses belonging to “earns” and “receives” explicitly applied to them respectively: “Subject to subsection (f [pensions]), all of the following apply to eligible individuals: (1) Each eligible individual must be paid a

weekly benefit rate ^with respect to the week *for* which the individual^ earns [no remuneration] or [with respect to the week *for* which the individual] receives ^no remuneration^.”

The above is a quote of the law the UIA should be following in making their determination though note that I have again emphasized *for* and I have duplicated in brackets ([]) the caret (^) surrounded clauses to make sure they are understood to be correctly applied to “receives” or “earns” respectively and not just for the “earns” or “receives” the clause falls nearest. It would make no sense to include the “or receives” if the whole “for” clause were not to be applied to it and no sense to mean “earns” without the “no remuneration.” The “or receives” [*for* which] clearly is intended to cover *non-earned* things such as severance pay or unearned “vacation”, etc. additionally paid to the employee as [from 48.(2)] “remuneration intended by the employing unit as continuing wages or other monetary *consideration as the result of the separation*[emphasis added][...]” In other words, aside from the fact that MSU should not have made the deposit in my account in the first place, the UIA has cited 27(c) but then not followed it in reaching their determination. The deposit to my bank account was certainly *in* the denied week but not *for* the denied week nor was the deposit *consideration as the result of the separation*. There is no way a layoff week is a vacation, try it sometime and you’ll quickly see.

MES 48 and in particular from (2) “However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section.”

Boiled to its simplest terms, payments for previously earned vacation and vested vacation and earned holiday[s] and vested holiday[s] are not “remuneration” (also see the last word quoted from 27(c) above). “Vesting” in the present case includes earned and “accrue[d] vacation pay credits” as provided in the MSU/APA contract. So it appears to me that the UIA has done the exact opposite of the very law section that it cites for denial of the claim and has provided no rationale for doing so.

I am hoping to receive from the UIA clear statements of their “informal rules” that are being used to override the clear meaning of the law so that I can rebut them too before any hearing that might be scheduled to review the denial.

**APPENDIX HHH
OCTOBER 10, 2017, UIA SYSTEM, UIA
INFORMAL RULES RESPONSE (BY UIA)**

(Omitted from Certified Record. A copy can be found in the July 30, 2020 Appellants Appendix for case 20-301-AE-C30 on page 133.)

Received: Tuesday, Oct 10, 2017 3:55:21 PM

Subject: RE: Informal rules request

Remuneration / Vacation Pay is discussed in the MES Act Section 27(c) & 48. You can find the MES Act at [http://www.legislature.mi.gov/\(S\(zosss4kpq2lsrmkxowfk0pd1\)\)/documents/mcl/pdf/mcl-chap421.pdf](http://www.legislature.mi.gov/(S(zosss4kpq2lsrmkxowfk0pd1))/documents/mcl/pdf/mcl-chap421.pdf)

Advocacy fact sheet regarding Special Payments can be found here http://www.michigan.gov/documents/uia/Special_Payment_2012_383574_7.pdf?20171010152509

UIA Fact Sheet 140 regarding how earning affect your weekly benefit amount can be found here http://www.michigan.gov/documents/uia/140_-_Claiming_Underemployment_Benefits_in_Michigan_392272_7.pdf

Thank you for using MiWAM!

**APPENDIX III
NOVEMBER 29, 2017 ALJ HEARING
TRANSCRIPT, NOT CONTRACT, JUST
PRACTICE**

(Testimony of Ms. McManaman being questioned by Ms. Willenbrecht page R23 lines 10-15:)

Q And as a review of that document pages 52 and 53 no where does it say that the company will take vacation pay and pay it out upon lay off?

A It's not in the contract it's just University practice and we notify the employees of this practice when they're given their layoff letter.

APPENDIX JJJ
NOVEMBER 29, 2017 ALJ HEARING
EXHIBITS, VACATION CONTRACT CLAUSES

Exhibits pages R34-35 (page 52 and 53 of the above quote; Petitioner emphasis added below):

-158 Employees accrue vacation pay credits ...
for each completed month of service.

- 159 An Employee may take vacation at any
time during the year with permission of the
supervisor and in accordance with departmental
requirements.

- 171 An Employee will receive payment for
unused vacation *when terminating employment.*

APPENDIX KKK
NOVEMBER 29, 2017 ALJ HEARING
EXHIBITS, MSU WRITTEN POLICY

Exhibits excerpted from pages R36-39 (Petitioner emphasis below):

An employee on layoff status will lose all recall
rights and be terminated upon the occurrence of
any of the following:

1. refusal to be available for interview,

2. refusal to accept a position offered if the salary offered is equivalent to 80% or more of the employee's salary before layoff, or
3. expiration of the recall eligibility period.

Definitions:

Layoff - the severance of an employee from the payroll due to lack of funds and/or lack of work, *with eligibility for recall*. To be eligible, the employee must satisfy eligibility requirements.

Recall - the reinstatement of a laid-off employee to active status within a period which is the lesser of the employee's length of service before layoff or 2 years. In the event of recall the employee will retain the original service date but does not receive service credits for the period of layoff. Accrued sick leave will be reinstated when the recalled employee returns to work (VARIES for APA and APSA).

Termination - the severance of an employee from the payroll *without eligibility for recall*.

...

Termination:

MSU Human Resources Solutions Center: Will notify department of procedure to be followed in the event of *termination of employee at the end of layoff period*.

**APPENDIX LLL
NOVEMBER 29, 2017 ALJ HEARING
TRANSCRIPT, ALLOCATION**

(From transcript pages R25-29)

MS. MC MANAMAN: Your Honor, it's Judy Mc Manaman. The Adjudication that's dated October 9th, holds the employee ineligible just for one week of benefits, and that's for the calendar week ending September 30th, the Agency treated this as a lump sum payment and that was the week it was made. When we did our initial protest we protested the weeks ending September 9th and September 16th as those were the two weeks where the vacation pay was allocated and continued. So, there is a little discrepancy there in that he was paid during the week of September 30th, but the time was actually allocated to the weeks of September 9th and September 16th.

ALJ WHEATON: Where did the allocation take place?

MS. MC MANAMAN: I'm sorry, what?

ALJ WHEATON: In what form and how did the allocation take place?

MS. MC MANAMAN: Well, the University, the Employer, allocated the vacation hours to those first two weeks of September.

ALJ WHEATON: Where does that show up?

MS. MC MANAMAN: I'm sorry?

ALJ WHEATON: Is that something in the July 7th letter?

MS. MC MANAMAN: No, and the letter says he will be continued on the payroll through the extent of your vacation accruals.

ALJ WHEATON: Well, ordinarily, it has to occur by way of contract or some other arrangement that the employer allocates and it sounds to me like what you're doing now is attempting to allocate retroactively. The common practice of the agency is where there has not been an allocation to apply it to the week in which it is received and so I'm wondering at what point the MSU advised the agency that this payment was allocated to in a period other than it was paid in?

MS. MC MANAMAN: Well, we notified the Agency in September that his pay was allocated for those two weeks.

ALJ WHEATON: Do you have a document that supports that statement?

MS. MC MANAMAN: In our exhibits that we sent there was the, well, at the top it says titled "Other Protests", it has a letter I.D. number on it and it has a chart where you can put in the time it's allocated, the amount, the date, and it's signed on the bottom by me on September 18th.

ALJ WHEATON: I don't believe I have that document. Let me look down -- did you send it in for this hearing?

MS. MC MANAMAN: Yes, it should be in with the exhibits. There was also --

ALJ WHEATON: Well, let's, I like one issue at a time, please.

MS. MC MANAMAN: Okay.

ALJ WHEATON: You say you have a document that you think is part of the exhibits that were sent in or proposed exhibits that shows an allocation and so that's what I'd like to look at.

MS. MC MANAMAN: That page is a Monetary Determination, like up at the top it just says "Other Protest", it has the Claimant's name and Social Security number and then boxes where you can report earnings, severance.

ALJ WHEATON: Okay, maybe this is what I have.

(Phone beeping)

ALJ WHEATON: Did somebody just drop off?

MR. WHITE: I am still here.

ALJ WHEATON: Ms. Willenbrecht, are you still here?

MS. WILLENBRECHT: Yes, I am.

ALJ WHEATON: Ms. Holda, are you still there?

Ms. Holda? Well, I guess she's dropped out somehow. Ms. Mc Manaman are you still there?

(Phone Beeping)

ALJ WHEATON: Is that you Ms. Holda?

MS. HOLDA: It is. I'm not sure what happened I wasn't even touching my phone.

ALJ WHEATON: I don't know. Well, glad to have you back. I think maybe I have found the document that you were referring to, it just says "Other

Protests” up at the top, but I guess I didn’t realize that was connected with the Monetary Determination.

MS. MC MANAMAN: Yes, it is on the back side of the Monetary Determination to allow the Employers to report any type of payments after the benefit year begins.

ALJ WHEATON: All right, so this document that I’m looking at says pay period from September 3rd to September 15th, 2017.

MS. MC MANAMAN: Correct.

ALJ WHEATON: Did you ever file a protest of the Agency’s Adjudication, that this only applied to one week?

MS. MC MANAMAN: No, your Honor, it was not caught, until this hearing issue came up and we realized that the Agency had not adjudicated it correctly, but we were beyond the 30 day protest date.

ALJ WHEATON: All right, Ms. Willenbrecht, response?

MS. WILLENBRECHT: To the document?

ALJ WHEATON: Well -- to, to, to,

MS. WILLENBRECHT: Well, my thought is if they missed the 30 days, you know, it’s a good cause issue.

ALJ WHEATON: I agree with you. Anything further on behalf of MSU?

MS. HOLDA: No, your Honor.

**APPENDIX MMM
NOVEMBER 29, 2017 ALJ HEARING,
ALLOCATION**

*(Submitted but not entered as an exhibit R54
[excerpts].)*

Other Protests

...

	Gross Dollar Amount	Period From (m/d/y)	Period To (m/d/y)	Date Paid (m/d/y)
Holiday/ Allocated Vacation Pay	\$2,356.53	9-3-17	9-15-17	9-29-17

*(Note that "Holiday" was hand lined out and
"Allocated" hand written into the form.)*

**APPENDIX NNN
NOVEMBER 29, 2017, ALJ HEARING
REGARDING ANOTHER MSU EMPLOYEE'S
VACATION PAY ON LAYOFF**

(Page R29-31, particularly page R30 lines 22-24)

MS. WILLENBRECHT: The Michigan Compensation Appellate Commission has affirmed that a Claimant is not ineligible for unemployment because of vacation payout. The claims -- this, our Claimant, we believe Mr. White is not ineligible for benefits under the Remuneration and Earnings Offset Provision of the Act, Section 27(c) and 48,

because the vacation pay was for paid, for vacation time he had earned prior to his separation. Thank you.

ALJ WHEATON: Could you give me a cite on that?

MS. WILLENBRECHT: You know I don't have the appeal number, but I will give that to you and the employer, I will look it up right after the hearing.

ALJ WHEATON: All right. I'm not sure what the circumstances were in that case whether it lines up with this one or not, but I'd be glad to read that, but seems a little different than the usual.

MS. WILLENBRECHT: I will do that, because it was Steven Washington case and it was affirmed by the Commission, so I will get that.

ALJ WHEATON: All right.

MS. HOLDA: Your Honor, I'm familiar with that case and in that case, cause it was a Michigan State University case and in that case the employee was not notified that they were going to be continued on the payroll.

ALJ WHEATON: If somebody would just give me the case number or name of the case I'd be glad to read it on my own.

MS. HOLDA: I have the appeal docket number.

ALJ WHEATON: That will help, give me that.

22 MS. HOLDA: *17-007597-253113. There was a*
23 *second one, as well, in that same matter, same*
24 *employee. That was 17-012285-253658.*

ALJ WHEATON: Thank you. I can dig that out on my own, but that helps me, thank you.

MS. WILLENBRECHT: Thank you.

APPENDIX OOO
CASE 17-012285-253658 JUNE 30, 2017 ALJ
FINDINGS AND CONCLUSIONS

(August 31, 2020 20-301-AE-C30 Motion for Summary Disposition Appellant Brief Exhibits pages E33-E43 particularly E37)

Findings of Fact: She was paid accrued vacation pay after her separation on February 28, 2017. The vacation pay was pay for vacation time she had earned prior to her separation.

In October, 2016, the claimant was laid off and provided a statement regarding the allocation of payments of other compensation during that layoff period to unemployment benefits. However, no such statement was provided for an allocation of compensation paid (or her accrued vacation pay as to be considered continued wages) to the period of separation after the January 27, 2017 towards unemployment benefits.

Reasoning and Conclusions of Law: The above statutory language of Sec 48 (2) provides that the payment of vacation pay shall not be offset against unemployment benefits where there is no allocation of such to be considered continued wages for the period of unemployment benefits. *Further, in this instance the claimant's pay was*

not continued wages, but instead a payment of her accrued earned vacation pay, which was established before her separation.

Therefore, the claimant is not subject to the remuneration and earnings offset provisions of Sections 27(c) and 48 of the Act for the period in question. *(Petitioner's emphasis)*

**APPENDIX PPP
DECEMBER 15, 2017 REQUEST FOR
REHEARING (OR RECONSIDERATION) MCL
421.48(2) SIMPLIFIED**

(Certified Record pages R47 simplifying MCL 421.48(2))

(2 simplified) Amounts paid for a vacation or a holiday intended by the employing unit as monetary consideration as the result of the separation shall be considered remuneration, however, payments for a vacation the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration.

**APPENDIX QQQ
STRUCTURAL DIAGRAM OF MCL 421.48(2)**

(From A118. Nuances in Petitioner's parsing could be argued but the essential structure seems obvious.)

All amounts paid to a claimant by an employing unit or former employing unit
for

a **vacation**
or
a holiday,
and
amounts paid
in the form of retroactive pay, pay in lieu of
notice, severance payments, salary
continuation,
or
other remuneration
intended by the employing unit as
continuing wages
or
other monetary consideration
as the result of the separation,
excluding SUB payments as described in section 44,
shall be considered remuneration in determining
whether an individual is unemployed under this
section and also in determining his or her benefit
payments under section 27(c),
for
the period designated by the contract or
agreement providing for the payment,
or
if there is no contractual specification of
the period to which payments shall be
allocated,
then for
the period designated by the employing
unit or former employing unit.

However,
payments for a **vacation** or holiday,

or
the right to which has irrevocably vested,
after 14 days following a vacation or
holiday
shall **not** be considered wages or remuneration
within the meaning of this section.

APPENDIX RRR
FEBRUARY 10, 2021 AND FURTHER EVENTS

February 10, 2021 claimant motions for reconsideration and vexatious proceedings. NO 30TH CIRCUIT COURT RESPONSE TO THE LATTER YET.

February 17, 2021 30th Circuit Court denies reconsideration of the 20-301-AE BENEFITS case by resending the denial of reconsideration for 20-191-AS superintending control case. (A February 25, 2021 query to the Court regarding this apparent error was ignored.)

February 22, 2021 claimant filed, in the 30th Circuit Court, another Certified Bill of Costs. NO 30TH CIRCUIT COURT RESPONSE YET.

February 22, 2021 claimant filed, in the 30th Circuit Court, a motion regarding the UIAC Frivolous Defense that their April 30, 2020 decision occasioned by the claimant's Complaint for Superintending Control absolved them of responsibility for the necessary superintending control filing costs. NO 30TH CIRCUIT COURT RESPONSE YET.

February 22, 2020 claimant filed a Leave to Appeal application with the Michigan Court of Appeals for case 20-191-AS which became 356364.

March 9, 2021 claimant filed a Leave to Appeal application with the Michigan Court of Appeals for case 20-301-AE which became case 356513.

June 15, 2021 Leave is denied by the Court of Appeals to 356364, the Superintending Control case.

June 15, 2021 Leave is denied by the Court of Appeals to 356513, the BENEFIT case.

July 6, 2021 claimant filed for reconsideration of 356364, the Superintending Control case.

July 6, 2021 claimant filed for reconsideration of 356513, the BENEFIT case.

August 11, 2021 the Court of Appeals denied the reconsideration motion for 365364, the Superintending Control case.

August 11, 2021 the Court of Appeals denied the reconsideration motion for 365513, the BENEFIT case.

September 20, 2021 claimant filed in the Michigan Supreme Court an application for Leave to Appeal the 365513 BENEFIT case which became 163548.

September 22, 2021 claimant filed in the Michigan Supreme Court an application for Leave to Appeal the 356364 Superintending Control Case which became 163562.

May 3, 2022 163548, BENEFIT case, denied by Michigan Supreme Court.

May 3, 2022 163562, Superintending Control case denied by Michigan Supreme Court.

May 24, 2022 claimant reconsideration request to Michigan Supreme Court in 163548 BENEFIT case.

May 24, 2022 claimant reconsideration request to Michigan Supreme Court in 163562 Superintending Control case.

July 28, 2022 Michigan Supreme Court denial of 163548 BENEFIT case.

July 28, 2022 Michigan Supreme Court denial of 163562 Superintending Control case.