

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CHRISTINA BRYAN-BROOKS,

Claimant-Appellant,

-v-

Case No. 17-005155-AE
Hon. Patricia Perez Fresard

SECURITAS SECURITY SERVICES USA, INC.,

Employer-Appellee,

and

MICHIGAN DEPARTMENT OF LICENSING
AND REGULATORY AFFAIRS,
UNEMPLOYMENT INSURANCE AGENCY,

Agency-Appellee.

17-005155-AE

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CATHY M. GARRETT
/s/ Stacy Stallworth

**OPINION AND ORDER REVERSING DECISION OF
THE MICHIGAN COMPENSATION APPELLATE COMMISSION**

At a session of said Court,
held in the City of Detroit,
County of Wayne, State of Michigan
on 9/11/2017

PRESENT: Hon. Patricia Perez Fresard
Circuit Court Judge

Pending before the Court is Appellant's appeal of a March 15, 2017, decision of the State of Michigan Compensation Appellate Commission (MCAC) affirming a determination by Administrative Law Judge (ALJ) Kenneth P. Poirier that the UIA did not abuse its discretion when it denied Appellant's application for waiver of the Agency's recovery of restitution. The Court, having reviewed the certified record and briefs, having heard oral argument on the matter, and otherwise being fully advised in the premises, issues the following opinion and order.

Background

Claimant/Appellant Christina Bryan-Brooks ("Brooks") received unemployment benefits that were not actually due to her and was ordered to pay restitution. It is undisputed that the excess benefits were paid to her through no fault of her own. MCL 421.62(a) requires that the Agency waive recovery of restitution where (1) the benefits were paid to an individual through

no fault of her own, and (2) requiring repayment would be “contrary to equity and good conscience.” Under MCL 421.62(a)(ii), repayment is deemed to be “contrary to equity and good conscience” when a claimant’s disposable income is at or below the federal poverty guidelines as defined by 42 USC 9902(2).

Brooks filed a form requesting waiver of restitution, but failed to fully complete the form. Specifically, she failed to provide social security numbers for her three children and sign the form, and submitted copies of her pay stubs instead of calculating and listing her income on the form. Her waiver was denied, as was her request for redetermination. Brooks failed to timely appeal the redetermination, but the ALJ concluded she had good cause, based on evidence her attorney did not receive the redetermination notice.

On appeal before ALJ Kenneth Poirier, Brooks argued that MCL 421.62(a) requires waiver because her pay stubs establish an income of \$10,927.67 in 2015, which would be below the poverty line for a family of 4. In response, the UIA’s representative testified that the request for waiver was denied because the form was not completed; the representative referenced discrepancies between the check stubs Brooks provided and the UIA’s files, and referenced materials submitted to the ALJ that purportedly showed those discrepancies, but the UIA never specified the amount of income it believed Brooks earned in 2015, or whether that amount was below the poverty line, and the documents it referenced were not admitted into evidence during the hearing.

The ALJ concluded that the UIA had not abused its discretion, because Brooks’ failure to provide her children’s social security numbers and failure to sign and notarize the form deprived the UIA of the opportunity to analyze whether or not Brooks’ income fell below poverty line guidelines. On appeal, the Michigan Compensation Appellate Commission (MCAC) upheld the ALJ’s decision.

This timely appeal followed. In her brief on appeal, Brooks notes that based on the income information she provided to the ALJ and to the UIA, her income would fall below poverty guidelines for a single person, much less a family of 4. She argues that MCL 421.62 does not make waiver of restitution contingent upon completion of a form, but instead requires waiver when a person’s income falls below federal poverty standards.

In its response brief, the UIA acknowledges that the statute mandates waiver when federal poverty standards are met, but argues that it legitimately denied Brooks’ waiver request because she failed to provide all required information. The UIA contends that, based on its records, Brooks’ income for 2015 was actually over \$28,000, which would exceed the threshold for a family of 4. The UIA states that instead of appealing, Brooks should have simply filed another waiver request (fully completed) one month following the initial denial.

Standard of Review

Judicial review of a decision of the Michigan Compensation Appellate Commission (MCAC) is limited. *See Saber v Capitol Reproductions*, 28 Mich App 462, 464; 184 NW2d 518 (1970). Where there is sufficient evidence, a reviewing court may not substitute its judgment for

that of the agency, even if the court might have reached a different result. *Black v Department of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). Great deference must be given to the agency's choice between two reasonable differing views as a reflection of the exercise of administrative expertise. *Traverse Oil Co v Chairman, Natural Resources Commission*, 153 Mich App 679, 691; 396 NW2d 498 (1986).

The agency's decision may be reversed only when the decision is contrary to law or is not supported by competent, material and substantial evidence. *See Becotte v Gwinn Schools*, 192 Mich App 682, 685; 481 NW2d 728 (1991). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. *McBride v Pontiac School District (On Remand)*, 218 Mich App 113, 122-123; 553 NW2d 646 (1996). Under this test, it matters only whether the position adopted by the agency (MCAC, in this case) is supported by evidence from which legitimate and supportable inferences were drawn. *Id.*

Discussion

The ALJ asked the UIA representative why the UIA denied Brooks' request for waiver, and in response, the UIA's representative testified that the denial occurred because Brooks failed to fully complete the form for the request. The UIA representative noted that there were discrepancies between the pay stubs submitted by Brooks and the information in UIA files, but never testified regarding the amounts in question. In fact, the representative's testimony suggested that income was not a factor in the determination – the denial was purely based on Brooks' failure to complete the form. (See UIA representative's testimony on page 31, lines 2-15.) The UIA acknowledged that it never requested additional information from Brooks prior to denying her request.

In its brief on appeal, however, the UIA suggests that the denial was legitimate because its records indicated that Brooks' annual income was actually \$28,000, which would exceed the poverty threshold for a family of 4 (\$24,000). To the extent the UIA references arguments and evidence that was not before the ALJ, the UIA is attempting to expand the record, which is not permitted.

The evidence presented to the ALJ was that Brooks' request for restitution was denied because she did not complete the form. The ALJ was also presented with evidence that Brooks' income for 2015 fell below federal poverty guidelines, either for a single person or a family of 4. The UIA did not present any contrary evidence regarding Brooks' income during the hearing. Thus, the great weight of the evidence before the ALJ established that Brooks' income for 2015 was below federal poverty guidelines. Under MCL 421.62(a), the UIA is required to waive restitution under such circumstances. Nevertheless, the ALJ affirmed denial of the waiver, reasoning that it was justified because Brooks' failed to provide complete information.

While it is undisputed that Brooks did not fully complete her application, it is also undisputed that the redetermination letter did not mention she could simply file another application for waiver; it specifically states that in order to preserve her rights, she must file for redetermination, a process which ultimately led to the appeal and has been going on for almost 18 months now. It is also worth noting that the application for waiver is poorly written and

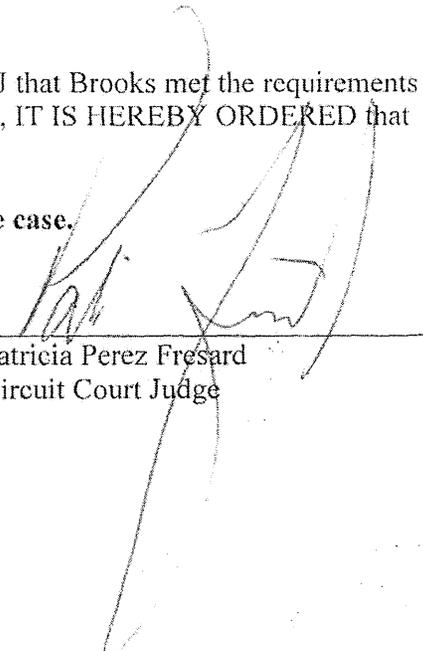
ambiguous. The only signature blank available is for "Unemployed Worker's Signature." However, at the time she filled in the form, Brooks was not unemployed.

The purpose of the Michigan Employment Security Act, a remedial act, is to safeguard the general welfare through the dispensation of benefits intended to ameliorate the disastrous effects of involuntary unemployment. Accordingly, the provisions of the act are liberally construed; disqualification provisions, however, are to be narrowly construed. *Tomei v General Motors Corp*, 194 Mich App 180, 184; 486 NW2d 100 (1992) (citing *Schultz v Oakland Co*, 187 Mich App 96, 102; 466 NW2d 374 (1991)).

Based on the reasoning of the ALJ and MCAC, if the UIA denies an application because of missing information, and a subsequent hearing before an ALJ establishes that the person was eligible for waiver at the time the request for waiver was submitted, the individual would nevertheless lose the appeal. Such a finding does not give the UIA any incentive to offer guidance or follow up to waiver applicants with respect to adequate completion of paperwork, and is contrary to the act's purpose.

Because there was un rebutted evidence before the ALJ that Brooks met the requirements for waiver, the ALJ's decision was contrary to law. Therefore, **IT IS HEREBY ORDERED** that the MCAC's decision dated March 15, 2017, is **REVERSED**.

This resolves the last pending matter and closes the case.



Patricia Perez Fresard
Circuit Court Judge