Legally Insufficient Notice and Unemployment Insurance Agency Determinations

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Frequently, unemployment insurance claimants and employers must rely only on short letter determinations and redeterminations (notices[4]) they receive from the Agency that provide little or no information about why the Agency has taken the action of which it is notifying the party. This confuses most parties and can often prevent them from adequately responding to a negative action taken against them by the Agency. The sparse or confusing notices prevent them from either making, effective protest and appeal decisions, or unable to prepare for hearings. The following article discusses the circumstances in which Agency notices are legally insufficient and what effect that should have on administrative proceedings.

Agency Required to Comply with US Department of Labor Standards

In the administration of its duties enumerated in the Michigan Employment Security Act, the State of Michigan must "cooperate with the appropriate agency of the United States under the Social Security Act." M.C.L. 421.11(a). Per this requirement, the Unemployment Insurance agency is statutorily required to comply with relevant regulations promulgated by the Department of Labor.

Relevant Department of Labor Notice Standard

Section 6013 of Appendix A to Part 602 of the Employment Security Manual requires the State of Michigan to include "in written notices of determination furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal." 20 CFR § 602 App. A, 6013(C)(2)

With regards to disqualification from benefits, the Department of Labor provides that: "If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, **but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified**, and what he must do in order to requalify for benefits or purge the disqualification. **The statement must be individualized to indicate the facts upon which the determination was based**, e.g., state, "It is found

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[4] The Michigan UIA refers to letters they send out advising employers or claimants of some action they have taken on a claim as either determinations or redeterminations. For the purpose of simplicity and unity with the case law we will refer to them here as "notices".

that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." **Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation**. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination." 20 CFR § 602 App. A, 6013(C)(2)(h) (2012) (Emphasis Added).

In the Department of Labor Advisory, Unemployment Insurance Program Letter, No. 01-16 concerning "Federal Requirements to Protect Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures, the Department of Labor specifically instructed on what qualifies as sufficient notice for fraud determinations. To satisfy federal law, the individual accused of fraud must "be provided with a written determination which provides **sufficient information to understand the basis for the determination** and how/when an appeal must be filed and must also include the facts on which the determination is based, the reason for allowing or denying benefits, the legal basis for the determination, and potential penalties or consequences." USDOL Unemployment Insurance Program Letter No. 1-16, page 2 (emphasis added). The Letter also provides a description of the information that must be included in a written determination:

1) A summary statement of the material facts on which the determination is based;
2) The reason for allowing or denying benefits; and
3) The conclusion of the decision based on the state's law

Relevant Michigan Law

In *Snyder v. RAM Broadcasting,* No. 82 23718 AE, Washtenaw Circuit Court (April 26, 1983) (Digest No. 16.39), the Circuit Court held that a "Notice of Hearing which [does] not give a plain statement that claimant's eligibility pursuant to Section 28(1)(a)… might be raised was not an adequate notice of the issue when it merely used the words 'Ability/Availability/Seeking Work/Eligibility.'" The reasoning the court used in deciding this notice was inadequate was that it was "not a plain statement of the matters asserted," meaning that "words and phrases divided by slashes and followed by a string citation to given sections of the Act do not provide a reasonably understandable notification that an issue will be considered, especially where the notification is intended for a lay person."

Recently in *Proulx v. Horiba Subsidiary Inc.,* 14-006880-241108 (Oct. 2, 2014) (Digest No. 18.21), an unpublished decision by the Michigan Compensation Appellate Commission (MCAC), the body held in part that the agency's fraud redetermination was insufficient because "it merely provide[d] a conclusory statement with no fact-finding to support it."

Agency Practice

The Unemployment Agency's practice of sending conclusory statements of disqualification or findings of misrepresentation violates both the mandatory

Department of Labor standards and existing Michigan law. Examples of insufficient notice under the Department of Labor standard include:

- "Your actions indicate you intentionally misled and/or concealed information to obtain benefits you were not entitled to receive"
- "You quit your job with COMPANY on DATE due to other personal reasons"
- Redeterminations including only the underlying issue and relevant statute number, such as: "Ability 28(1)(c)"

Good Cause to Re-Open

Pursuant to UIA Rule 270(1)(e), ""fail[ure] to receive a reasonable and timely notice" is good cause for reconsideration and reopening. Section 32(a) of the MESA provides that "the claimant and other interested parties shall be promptly notified of the determination and the reasons for the determination." Based on the failure to comply with Department of Labor standards and existing Michigan law, any agency determination or redetermination is void if it does not include:

- An explanation of the reason for the ineligibility or disqualification that is sufficiently detailed so that the claimant knows why he or she is ineligible
- Information about what the claimant must do to appeal or requalify for benefits
- Individualized facts to indicate how the decision was reached

Effect of Insufficient Notice

Void ab initio

Insufficient notice of an agency decision makes that decision null and can be treated as *void ab initio*. The Michigan Court of Appeals has held that a failure to give proper notice as required by the applicable statute "is a jurisdictional defect that renders the subsequent proceedings void." *Kanouse v Montcalm County Drain Comm'r*, unpublished opinion per curium of the Court of Appeals, issued March 19, 2002 (Docket No. 236285), p 2. Likewise, the Court of Appeals held in a workers' compensation case that improper notice renders a subsequent judgment potentially voidable. *Abbott v Howard*, 182 Mich App 243 (1990).

Procedural Due Process

The notion that insufficient notice renders a subsequent decision void also comes from a two-step analysis:

(1) Inadequate notice is a violation of procedural due process rights, and
(2) Decisions that relied on a lack of due process cannot be sustained.

Under step (1), it is clear from U.S. Supreme Court jurisprudence that proper notice is fundamental to due process. *See, e.g., Mullane v Central Hanover Bank & Trust Co.*, 339 US 306 (1950). In a case specifically about the rights of welfare recipients, the U.S. Supreme Court said that due process requires "timely and adequate notice detailing the reasons for" an agency decision, and"[t]hese rights are important in

cases such as those before us, where recipients have challenged proposed terminations." *Goldberg v Kelly*, 397 US 254 (1970). *See also Cosby v Ward*, 843 F2d 967 (CA 7, 1988) (failure to provide adequate written notice of issues to be raised at unemployment compensation hearing violated fair hearing requirement).

Under step (2), courts have voided judgments that were founded on violations of procedural due process. Often these cases fall under procedural rules such as FRCP 60(b)(4) and MRCP 2.612(c)(1)(d), which allow courts to provide relief from judgments that are void. Courts have interpreted those rules as applying to judgments that arose from inadequate process. *See, e.g., In re Ruehle*, 307 BR 28 (Bankr CA 6, 2004) (upholding a lower court's decision to vacate an order where one party was denied due process of law).

Lack of Jurisdiction

An ALJ's Authority

Where there is an occurrence of insufficient notice or a void determination, an Administrative Law Judge has the authority to dismiss or adjourn a hearing based on lack of jurisdiction over the matter. An ALJ's authority to return jurisdiction can be inferred from both the Michigan Employment Security Act and the MAHS hearing rules issued by LARA. Section 33 of the Act authorizes MAHS to accept cases on appeal and then give them to Administrative Law Judges so long as they deal with redeterminations issued by the agency in accordance with Section 32a. MESA 421.33(1). Section 32a(1) details the agency's decision-making process, by which a determination or redetermination is issued at *each* step, followed by "a hearing on the redetermination before an administrative law judge." MESA 421.32a(1). According to these rules, the ability to have a hearing with an ALJ is contingent upon the existence of an agency decision. Without a valid determination or redetermination, the judge does not have jurisdiction over the case under MESA.

Also, it is standard practice for an ALJ to return a matter to the Agency when they can't find an Agency determination to support it. ALJs commonly return matters to the Agency when no determination can be found in their system or in the hearing file. Legally insufficient notice is akin to that situation.

The administrative hearing rules, issued by LARA for MAHS, support the principle that the ALJ has broad discretion in deciding how to handle a case, including issues that arise before or after hearings and questions of jurisdiction. For example, Rule 106 contains a lengthy list of powers that the ALJ has, including the power to, "on an administrative law judge's own initiative, adjourn hearings." Department of Licensing and Regulatory Affairs Michigan Administrative Hearing System Administrative Hearing Rules (eff. January 15, 2015), R 792.10106(1)(o). In addition, Rule 110 allows the ALJ to decline to consider a document that was not properly served on all parties, which is another form of inadequate notice. *Id.* R 792.10110(8).

Application to Good Cause

The fact that a claimant or employer received insufficient notice in the determinations provides her with good cause for filing a late appeal. The Agency's

administrative code provides that 'good cause' for reconsideration under MCL 421.32a includes among other things failure "to receive a reasonable and timely notice, order, or decision." Mich Admin Code R 421.270(1)(e). Where a determination is legally insufficient on its face, it does not provide reasonable notice as required by 270(1)(e). On that basis, there is good cause for reopening, rehearing, or late appeals.

Appropriate Remedies

There are two possible appropriate remedies when the UIA has provided notice that does not meet the Department of Labor standards. First, a notice could be deemed unreasonable on its face. With a finding of unreasonable notice, the notice can be voided and jurisdiction should return to the Agency to issue a notice that complies with the above-mentioned standards. Alternatively, the unreasonable notice could form the basis for good cause for reopening or late appeal. Under a finding for good cause for reopening or late appeal, a case would then proceed on the underlying merits of the unemployment claim.