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STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF LICENSING AND
REGULATORY AFFAIRS/UNEMPLOYMENT
INSURANCE AGENCY,

Appellant,

v

FRANK LUCENTE,

Claimant-Appellee,

and

DART PROPERTIES II, LLC,

Appellee.

FOR PUBLICATION
October 15, 2019
9:15 a.m.

No. 342080
Macomb Circuit Court
LC No. 2017-000125-AE

DEPARTMENT OF TALENT AND ECONOMIC
DEVELOPMENT/UNEMPLOYMENT
INSURANCE AGENCY,

Appellant,

v

MICHAEL HERZOG,

Claimant-Appellee

and

CUSTOM FORM, INC.,

Appellee.

No. 345074
Wayne Circuit Court
LC No. 18-003162-AE

DEPARTMENT OF TALENT AND ECONOMIC
DEVELOPMENT/UNEMPLOYMENT
INSURANCE AGENCY,

Appellant,

v

WAYNE CARLISLE,

Claimant-Appellee,

and

CONTI-HTE, LLC, and ROSENDIN ELECTRIC,
INC.,

Appellees.

No. 345943
Wayne Circuit Court
LC No. 18-003500-AE

Before: GADOLA, P.J., and SERVITTO and REDFORD, JJ.

GADOLA, P.J.

In each of these consolidated cases, appellant, the Department of Licensing and Regulatory Affairs (now the Department of Talent and Economic Development)/Unemployment Insurance Agency (the Agency), appeals by leave granted¹ the circuit court's order affirming the decision of the Michigan Compensation Appellate Commission (MCAC). In each case the MCAC held that the respective claimant was not required to pay restitution and fraud penalties under the Michigan Employment Security Act (MESA), MCL 421.1 *et seq.* We reverse and remand.

¹ *Mich Unemployment Ins Agency v Lucente*, unpublished order of the Court of Appeals, entered July 9, 2018 (Docket No. 342080); *Dep't of Talent and Economic Dev v Herzog*, unpublished order of the Court of Appeals, entered January 22, 2019 (Docket No. 345074); *Dep't of Talent and Economic Dev v Carlisle*, unpublished order of the Court of Appeals, entered February 21, 2019 (Docket No. 345943).

I. FACTS

A. LUCENTE (342080)

In 2008, appellee Frank Lucente lost his employment; he applied for and received unemployment benefits in 2008 and 2009 by certifying his unemployment status with the Agency. Lucente did not have a fixed address from 2008 through 2012, and he received his unemployment checks through his post office box.

On February 2, 2010, Lucente applied for extended unemployment benefits. On February 16, 2010, Lucente was hired as a full-time employee by appellee, Dart Properties II, LLC (Dart). Lucente did not notify the Agency of his full-time employment with Dart, and instead, from February 20, 2010, through June 19, 2010, falsely certified that he was unemployed. After June 19, 2010, Lucente stopped informing the Agency of his unemployment status and stopped receiving unemployment benefits. In July 2010, Lucente cancelled his post office box and did not notify the Agency of a forwarding address.

Thereafter, the Agency learned that Lucente had been employed with Dart since February 16, 2010. On November 30, 2010, the Agency issued two documents captioned “Notice of Redetermination.” The first redetermination involved Lucente’s eligibility for unemployment benefits from February 20, 2010, through June 19, 2010 (eligibility redetermination), and stated:

YOU WORKED FULL-TIME FOR DART PROPERTIES II LLC BEGINNING 2/16/10. AS SUCH, YOU ARE INELIGIBLE FOR BENEFITS UNDER SECTION 48 OF THE MES ACT. YOU WERE PAID, SO RESTITUTION IS REQUIRED, AS SHOWN, UNDER SECTION 62 OF THE ACT.

The second redetermination involved Lucente’s use of fraud to improperly obtain unemployment benefits from February 20, 2010, through June 19, 2010 (fraud redetermination), and stated:

YOUR ACTIONS ARE CONSIDERED TO HAVE BEEN INTENTIONAL BECAUSE YOU FAILED TO NOTIFY THIS AGENCY THAT YOU WERE WORKING FULL-TIME AND CONTINUED TO COLLECT BENEFITS FOR FOUR MORE MONTHS. YOU INTENTIONALLY WITHHELD INFORMATION TO OBTAIN BENEFITS. YOU ARE DISQUALIFIED UNDER SECTIONS 62(B) AND 54(B) OF THE MES ACT.

Both redeterminations notified Lucente of his right to appeal the Agency’s decisions, stating that “[i]f a protest or appeal is not received within 30 days, a decision will become final and restitution may be due and owing.” The documents also stated:

If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 62(b) of [the MESA] will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. . . .

The Agency mailed the redeterminations to Lucente's post office box on December 1, 2010. The Agency also mailed Lucente a document titled "Non-Protestable Summary of Previously (Re) Determined Restitution," on December 1, 2010, which stated that Lucente owed the Agency \$4,794 in restitution and \$18,276 in fraud penalties, totaling \$23,070, for improperly receiving unemployment benefits from February 20, 2010, through June 19, 2010. The Agency sent additional notices to Lucente on February 24, 2012, March 27, 2012, April 24, 2012, and May 24, 2012. Lucente asserts that he did not receive the notices.

On October 29, 2013, the Agency mailed Lucente a "Notice of Garnishment," indicating that 25% of his wages would be garnished to repay the amount he owed to the Agency. The Agency began garnishing his wages on or about April 3, 2014. Lucente did not object to the garnishment, and later asserted that he wanted to "do the right thing" and repay the improperly-received unemployment benefits. According to Lucente, however, he was not aware of the fraud penalties also assessed against him.

Eventually, Lucente called the Agency to inquire about the amount he owed in restitution, and learned that he had been assessed fraud penalties. On January 11, 2016, Lucente appealed the redeterminations to the Agency. On January 19, 2016, the Agency denied Lucente's appeal because it was not filed within the statutory time period as required by MCL 421.32a(2).

Lucente appealed the Agency's January 19, 2016 orders. He conceded that he had not been eligible for unemployment benefits from February 20, 2010, through June 19, 2010, but challenged the Agency's fraud redetermination. The Administrative Law Judge (ALJ) affirmed the Agency's orders. The ALJ determined that Lucente established good cause under MCL 421.32a(2) to belatedly appeal the Agency's redeterminations, but that Lucente had conceded that he was ineligible for unemployment benefits beginning February 16, 2010, and was required to pay fraud penalties because he had obtained the benefits by certifying falsely that he was unemployed.

Lucente appealed the orders of the ALJ to the MCAC, challenging the determination that he was subject to fraud penalties. The MCAC issued two decisions, affirming the portion of the ALJ's decisions finding that Lucente established good cause for his late appeal under MCL 421.32a(2), but reversing the ALJ's findings that Lucente had been ineligible for unemployment benefits under MCL 421.48, and was subject to the fraud provisions of MCL 421.54(b) and 62(b). The MCAC held that the Agency's November 30, 2010 eligibility redetermination had not been issued timely, explaining, in relevant part:

[Under MCL 421.32(f),] a benefit check is considered a determination that the claimant was eligible and qualified during the period covered by the check. Upon a protest by an employer, the Agency may only issue "a redetermination of the claimant's eligibility or qualification **as to that period.**" If the Agency wants to issue an adjudication involving later weeks, the Agency may issue a separate **determination** as to those weeks.

The November 30, 2010 redetermination indicates that, starting February 16, 2010[,] the claimant is "ineligible for benefits under Section 48 of the [Act]."

The only way that the Agency's November 30, 2010 redetermination is valid under Section 32(f) is if the determination in this case is the benefits check covering the period including February 16, 2010. The benefit check covering that period was issued in late March 2010 at the latest.

* * *

The Agency's November 30, 2010 redetermination was not issued by the Agency within 30 days of the March 2010 benefit check determination, and the Agency did not present any indication of good cause for the reconsideration. Thus, the March 2010 determination that the claimant was eligible and qualified for those weeks became final. (Footnote omitted; emphasis in original.)

The MCAC also cited "many legal and procedural irregularities" because the Agency's November 30, 2010 eligibility redetermination failed to adhere to the statutory requirements of §32a. The MCAC stated, in relevant part:

The November 30, 2010 redetermination does not "state the reasons for the redetermination" nor is it a document "affirming, modifying, or reversing the prior determination." In fact, the November 30, 2010 redetermination does not include any reference whatsoever to any prior determination. Thus, in addition to not being a timely redetermination under Section 32a(2) of the Act, the November 30, 2010 redetermination failed to include the information required by Section 32a(1) of the Act.

Without an employer protest of the March 2010 benefit check determination, the Agency was without authority to issue a redetermination of the benefit check determination. Even if the Agency followed proper procedure, which it clearly did not, under Section 32(f), the Agency's redetermination of a benefit check determination may only cover the period of time covered by the benefit check determination. Under Section 32(f), if the Agency would like to issue an adjudication as to later weeks, the Agency must issue a determination. In this case, the Agency's redetermination covered the time from February 16, 2010 through present despite the fact that the March 2010 benefit check determination only covered two weeks.

The Agency's November 30, 2010 redetermination was issued in violation of numerous provisions of law: (1) it was untimely without good cause shown under Section 32a(2) of the Act; [(2)] it failed in nearly every respect to conform to the requirements of a redetermination under Section 32a(1) of the Act; and (3) as it was a redetermination of a check determination under Section 32(f) of the Act, it impermissibly covered a time period outside the time covered by the determination check.

Thus, we are left with the conclusion that the Agency issued the November 30, 2010 redetermination in violation of Sections 32a(2), 32a(1), and 32(f) of the Act. As the Agency was without authority to issue the untimely

November 30, 2010 redetermination, the redetermination is null and void. As a result, there exists no valid Agency adjudication regarding ineligibility under Section 48 of the Act. Because there was no validly issued and appealed adjudication before the ALJ, the ALJ was without jurisdiction to find the claimant ineligible. Therefore, we reverse the ALJ's decision holding the claimant ineligible for benefits under the employed provision of the Act, Section 48.

The MCAC also held that the Agency improperly issued the fraud redetermination without first issuing a determination, stating:

The November 30, 2010 redetermination indicates that the claimant "intentionally withheld information to obtain benefits." Thus, the November 30, 2010 redetermination deals with intentional misrepresentation and does not relate to whether or not the claimant was eligible or qualified during any period of time. Therefore, as a matter of logic, it cannot be a redetermination of a previous benefit check determination. Thus, in violation of Section 32(a) of the Act, the Agency issued a redetermination without previously issuing a determination.

* * *

We are left with the conclusion that the Agency issued the November 30, 2010 redetermination in violation of Sections 32(a) and 32a(l) of the Act. As the Agency was without authority to issue the materially defective and legally insufficient November 30, 2010 redetermination, the redetermination is null and void. As a result, there exists no valid Agency adjudication on the issue of fraud in this case. Because there was no validly issued and appealed adjudication before the ALJ, the ALJ was without jurisdiction to find the claimant subject to the fraud provisions of the Act. Therefore, we reverse the ALJ's decision holding the claimant subject to the fraud provisions of the Act, Sections 54(b) and 62(b).

The Agency appealed the MCAC's decisions to the circuit court, contending that the Agency had timely sought to recover Lucente's fraudulently-obtained unemployment benefits under MCL 421.62(a). The circuit court affirmed the MCAC's decisions, and adopted the reasoning of the MCAC.

B. HERZOG (345074)

In February 2016, appellee Michael Herzog was approved for unemployment benefits, but did not begin receiving unemployment benefits until June 2016. On October 10, 2016, Herzog began working full-time for appellee Custom Form, Inc. (Custom Form), but continued to verify his unemployment status with the Agency. Herzog received unemployment benefits from October 15, 2016 through November 12, 2016, despite his full-time employment with Custom Form. According to Herzog, he believed that he was entitled to unemployment benefits for 26 weeks, even though he obtained full-time employment during that time.

On October 11, 2017, the Agency issued and mailed to Herzog two documents captioned "Notice of Redetermination." The first document involved Herzog's eligibility for unemployment benefits (eligibility redetermination), while the second involved the Agency's

finding that Herzog had improperly obtained unemployment benefits through fraud (fraud redetermination). The eligibility redetermination stated that, because Herzog had worked full time for Custom Form from October 10, 2016, through March 3, 2017, he was ineligible to receive unemployment benefits during that time. The Agency sought to recoup the unemployment benefits paid to Herzog from October 15, 2016, through November 12, 2016, and the fraud redetermination stated that he “intentionally misled and/or concealed information to obtain benefits” that he was not entitled to receive. Herzog was ordered to pay the Agency \$1,810 in restitution and \$7,240 in fraud penalties.

Herzog appealed the Agency’s October 11, 2017 redeterminations. The ALJ issued two orders setting aside the redeterminations as void, holding that the Agency was required to issue a “determination” before issuing a “redetermination” under §32a. The ALJ relied upon an earlier decision of the MCAC that the Agency’s failure to first issue a determination violated the claimant’s right to due process. The Agency appealed the ALJ’s orders to the MCAC, which affirmed the ALJ’s orders. The circuit court thereafter affirmed the MCAC’s decisions, finding that the decisions were supported by competent, material, and substantial evidence, and that deference was to be given to the MCAC’s interpretation of the MESA.

C. CARLISLE (345943)

Appellee Wayne Carlisle applied for and received unemployment benefits in 2016; his unemployment “benefit year” began on February 28, 2016. Carlisle received unemployment benefits from August 6, 2016, through October 8, 2016, and from November 26, 2016, through December 31, 2016. However, Carlisle worked as a full-time employee for appellee Rosendin Electric, Inc. (Rosendin) from August 4, 2016, through November 16, 2016. Thereafter, Carlisle worked as a full-time employee for appellee Conti-HTE, LLC (Conti).²

On October 4, 2017, the Agency issued and mailed Carlisle three documents captioned “Notice of Redetermination.” The first stated that Carlisle was ineligible to receive benefits from July 31, 2016, through November 19, 2016, because of his employment with Rosendin. The second redetermination involved the Agency’s finding that Carlisle improperly obtained benefits through fraud from August 6, 2016, through October 8, 2016, and informed Carlisle that he was required to pay restitution and fraud penalties under MCL 421.62(a). The third redetermination stated that because Carlisle’s benefit year was terminated due to fraud, the benefits Carlisle received from November 26, 2016, through December 31, 2016, were overpayments that he was required to repay.

Carlisle appealed the redeterminations to the Agency, arguing that the Agency improperly sought to impose restitution and fraud penalties against him by issuing the October 4, 2017 “redeterminations” without first issuing “determinations.” The ALJ reversed the October 4, 2017 redeterminations, holding that the Agency’s failure to issue determinations before issuing the October 4, 2017 redeterminations rendered those redeterminations void under §32a. The ALJ relied upon an earlier decision of the MCAC that the Agency’s failure to first issue a

² The record is unclear regarding the exact time period Carlisle worked for Conti.

determination violated the claimant's right to due process, and concluded that Carlisle therefore was not required to pay restitution or fraud penalties. The MCAC and the circuit court affirmed the ALJ's decisions.

II. DISCUSSION

In each of these consolidated cases, the Agency contends that the circuit court erred in affirming the MCAC's decisions that the appellee in each case was not required to pay restitution and was not subject to fraud penalties because the Agency's actions to recoup the fraudulently-obtained benefits did not comply with the procedures articulated by §32a of the MESA. We agree.

A. REVIEW OF THE AGENCY'S DECISION

These consolidated cases require us to review the decisions of the circuit court, which in turn reviewed the decisions of the MCAC. Michigan's Constitution provides that "[a]ll 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." Const 1963, art 6, § 28. The MESA expressly provides for judicial review of unemployment benefits claims, *Hodge v US Security Assoc, Inc*, 497 Mich 189, 193; 859 NW2d 683 (2015), and states, in relevant part:

The circuit court . . . may review questions of fact and law on the record made before the [ALJ] and the [MCAC] involved in a final order or decision of the [MCAC], 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. . . . [MCL 421.38(1).]

Thus, the circuit court must affirm the decision of the MCAC if it conforms to the law, and is supported by competent, material, and substantial evidence on the entire record. *Hodge*, 497 Mich at 193. This Court, however, when reviewing a lower court's review of an administrative decision, must determine whether the lower court "applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings, which is essentially a clear-error standard of review." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 431; 906 NW2d 482 (2017) (quotation marks and citation omitted). Substantial evidence means evidence that "a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence." *Id.* (quotation marks and citation omitted). We review the lower court's legal conclusions de novo. *Braska v Challenge Mfg Co*, 307 Mich App 340, 352; 861 NW2d 289 (2014). The interpretation of a statute presents an issue of law that we review de novo. *Muci v State Farm Mut Auto Ins Co*, 478 Mich 178, 187; 732 NW2d 88 (2007). "A decision of the MCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework." *Lawrence*, 320 Mich App at 432 (quotation marks and citation omitted).

Also relevant to this Court's review are the principles applicable to statutory construction. The primary goal of statutory construction is to give effect to the intent of the

Legislature. *City of Coldwater v Consumers Energy Co*, 500 Mich 158, 167; 895 NW2d 154 (2017). The best indication of the intent of the Legislature is the plain meaning of the statute’s clear and unambiguous language. See *Deruiter v Byron Twp*, 325 Mich App 275, 283; 926 NW2d 268 (2018). Agencies have authority to interpret the statutes that they administer, *Clonlara, Inc v State Board of Ed*, 442 Mich 230, 240; 501 NW2d 88 (1993), and we respectfully consider an agency’s interpretation of the statute that it administers. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008). But although an agency’s construction of a statute that it administers is entitled to “respectful consideration” when consistent with the “spirit and purpose” of the statute, the agency’s construction is not binding upon the courts and cannot conflict with the Legislature’s intent. *Id.* at 103, 108. Ultimately, the language of the statute controls. *Id.* at 108.

B. MESA

The MESA establishes both the eligibility of a claimant to receive unemployment compensation, and also the bases for disqualification for those benefits. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 414; 565 NW2d 844 (1997). The underlying purpose of the MESA is to “lighten the burden of economic insecurity on those who become unemployed through no fault of their own.” *Id.* at 417. Because it is a remedial statute, it should be liberally construed to achieve its goal. *Id.* However, a person must be eligible to be entitled to receive unemployment benefits under the MESA. *Shirvell v Dep’t of Attorney General*, 308 Mich App 702, 755; 866 NW2d 478 (2015).

Under the MESA, a decision that a claimant is, or is not, entitled to benefits is called a determination. See MCL 421.27(a)(1). If the claimant disagrees with a determination, he or she is entitled to request a redetermination. MCL 421.32a(1). A request for a redetermination must be made by the claimant within 30 days of the mailing of the determination. *Id.* The Agency may also seek review of its own decision under that section and is bound by the same time limit. *Id.* Under §32a(1), the Agency is required to timely review challenges to its determination, and must either issue a redetermination or transfer the matter to an administrative law judge for a hearing. *Id.* After the 30-day period has expired, the Agency may nonetheless reconsider a determination for “good cause,” but only if the request for redetermination was filed within one year from the date of the determination. *Id.* If a party is dissatisfied with the redetermination issued by the agency, the party may appeal, first to an ALJ, and subsequently to the MCAC and the circuit court. See MCL 421.33; MCL 421.34; MCL 421.38; *Hodge*, 497 Mich at 193.

1. LUCENTE (342080)

Section 32 of the MESA, MCL 421.32, provides that the issuance of a benefit check to a claimant is a “determination” by the Agency. Although the MESA has been subject to a number of amendments, at the time Lucente received the disputed benefits, and at the time the Agency issued its November 30, 2010 redeterminations to Lucente, MCL 421.32(d) provided:

(d) The issuance of each benefit check shall be considered a determination by the unemployment agency that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits. A chargeable employer, upon receipt of a listing of the check as provided in section 21(a), may

protest by requesting a redetermination of the claimant's eligibility or qualification as to that period and a determination as to later weeks and benefits still unpaid that are affected by the protest. Upon receipt of the protest or request, the unemployment agency shall investigate and redetermine whether the claimant is eligible and qualified as to that period. If, upon the redetermination, the claimant is found ineligible or not qualified, the unemployment agency shall investigate and determine whether the claimant obtained benefits, for 1 or more preceding weeks within the series of consecutive weeks that includes the week covered by the redetermination, improperly as the result of administrative error, false statement, misrepresentation, or nondisclosure of a material fact. If the unemployment agency finds that the claimant has obtained benefits through administrative error, false statement, misrepresentation, or nondisclosure of a material fact, the unemployment agency shall proceed under the appropriate provisions of section 62. [MCL 421.32.³]

Review of a determination of eligibility to receive benefits is addressed by §32a of the MESA, which at the time Lucente received the disputed benefits, and at the time the Agency issued the redeterminations to Lucente, provided, in relevant part:

(1) Upon application by an interested party for review of a determination, upon request for transfer to a referee for a hearing filed with the commission within 30 days after the mailing or personal service of a notice of determination, or upon the commission's own motion within that 30-day period, the commission shall review any determination. After review, the commission shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination, or may in its discretion transfer the matter to a referee for a hearing. If a redetermination is issued, the commission shall promptly notify the interested parties of the redetermination, the redetermination is final unless within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the commission for a hearing on the redetermination before a referee in accordance with section 33.

(2) The commission may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to a referee for a hearing. A reconsideration shall not be made unless the request is filed with the commission, or reconsideration is initiated by the commission with notice to the interested parties, within 1 year from the date of

³ MCL 421.32(d) has since been amended. See 2013 PA 144 (effective October 29, 2013); 2016 PA 522 (effective April 9, 2017).

mailing or personal service of the original determination on the disputed issue.
[MCL 421.32a.⁴]

Although §32a governs review of a determination of benefits, recovery by the Agency of improperly-paid unemployment benefits is governed by §62 of the MESA, MCL 421.62. Under §62, if the Agency determines that an individual obtained benefits to which he or she was not entitled, the Agency may recover the amount wrongfully received. MCL 421.62a. In addition, if the improperly paid benefits were the result of the individual's fraud or false statements, the Agency may impose penalties under MCL 421.54. On November 30, 2010, when the Agency issued its redeterminations to Lucente, §62 provided, in relevant part:

(a) If the commission determines that a person has obtained benefits to which that person is not entitled, the commission may recover a sum equal to the amount received The commission shall not recover improperly paid benefits from an individual more than 3 years, or more than 6 years in the case of a violation of section 54(a) or (b) or sections 54a to 54c, after the date of receipt of the improperly paid benefits unless: (1) a civil action is filed in a court by the commission within the 3-year or 6-year period, (2) the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits, or (3) the commission issued a determination requiring restitution within the 3-year or 6-year period. Furthermore, except in a case of an intentional false statement, misrepresentation, or concealment of material information, the commission may waive recovery of an improperly paid benefit if the payment was not the fault of the individual and if repayment would be contrary to equity and good conscience.

* * *

(c) Any determination made by the commission under this section is final unless an application for a redetermination is filed with the commission in accordance with section 32a.

(d) The commission shall take the action necessary to recover all benefits improperly obtained or paid under this act, and to enforce all penalties under subsection (b). [MCL 421.62.⁵]

⁴ MCL 421.32a has since been amended. See 2011 PA 269 (effective December 19, 2011); 2017 PA 232 (effective July 1, 2018).

⁵ MCL 421.62 has since been amended. See 2011 PA 14 (effective March 29, 2011); 2011 PA 269 (effective December 19, 2011); 2013 PA 147 (effective October 29, 2013); 2016 PA 522 (effective April 9, 2017); 2017 PA 231 (effective March 21, 2018).

The statutory language of §62 in effect at the time the Agency determined that Lucente had improperly received benefits clearly provided that if the claimant violated MCL 421.54—the statute describing the penalties for a claimant who obtains unemployment benefits through fraud—the Agency could seek restitution within six years of the date that the claimant improperly received the benefits. In fact, under §62(d) the Agency was compelled to take the action necessary to recoup any benefits improperly obtained, along with any applicable penalties. Section 62(c) suggests that the Agency does so by issuing a determination under §62, which is final unless a redetermination under §32a is sought. MCL 421.62.

In this case, it is undisputed that Lucente misrepresented that he was not employed from February 16, 2010, to June 20, 2010, and thereby obtained unemployment benefits he was not eligible to receive. On November 30, 2010, between six and nine months after Lucente wrongfully received those benefits, the Agency issued its decisions to recover the benefits and also fraud penalties, within the six-year time period stated in §62(a). The Agency, however, captioned the decisions “redeterminations” instead of “determinations.” The MCAC subsequently determined, and the circuit court affirmed, that the decisions were void because the Agency failed to seek restitution of the wrongly-obtained benefits within the time limits and procedural requirements established by §32a. The MCAC determined that the Agency’s “redeterminations” did not comply with the time restrictions imposed by §32a and “failed in nearly every respect to conform to the requirements of a redetermination” under that section.

The Agency, however, was not proceeding under §32a; rather, the Agency was acting under §62 to recoup wrongfully-paid benefits. Quite simply, §32a is designed to give both claimants and employers a right to a redetermination of the Agency’s eligibility determination. Section 62, in contrast, gives *the Agency* the ability to recoup fraudulently-obtained benefits. Under §62, the agency was authorized, and indeed compelled, to take the action necessary to recoup the benefits improperly obtained by Lucente, along with any applicable penalties. See former MCL 421.62(d) (the Agency “*shall* take the action necessary to recover all benefits improperly obtained or paid under this act”) (emphasis added). To impose upon the Agency, when proceeding under §62, the additional procedural and time requirements of §32a is to create requirements not imposed by the Legislature. We therefore hold that because the Agency in this case was proceeding under §62, the Agency did not err in failing to comply with §32a.

In so holding, we remain mindful that our primary goal in construing any statute is to give effect to the intent of the Legislature, *Coldwater*, 500 Mich at 167, and that the best indication of the intent of the Legislature is the plain meaning of the statute’s clear and unambiguous language. See *Deruite*, 325 Mich App at 283. Statutory provisions are not read in isolation, but rather as a whole and in context, *In re Estate of Erwin*, 503 Mich 1, 11; 921 NW2d 308 (2018), and statutory sections within an act must be read in the context of the entire act. *G C Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 421; 662 NW2d 710 (2003). If the intent of the Legislature is not clear, we interpret a statute in a manner such that every word, phrase, and clause is given effect, and we avoid an interpretation that renders any part of the statute nugatory or surplusage. *In re \$55,336.17 Surplus Funds*, 319 Mich App 501, 507; 902 NW2d 422 (2017).

Here, because the time limitations of §32a differ from those applicable to proceedings under §62, applying the time limitations of §32a to actions under §62 conflicts with and renders nugatory the time limitations imposed by the Legislature in §62. We will not so read the statute.

Rather, we conclude that the Agency was not required to comply with the requirements of §32a when proceeding under §62.⁶ In this case, the Agency took the precise action contemplated by §62; well within the time limits for making such determinations under §62, the Agency determined that Lucente had improperly obtained benefits, and made its demands to recoup those benefits together with the statutorily-authorized penalties.

We also conclude that the Agency's captioning of its determination as a "redetermination" was not fatal to its ability to recoup fraudulently-obtained benefits under §62. The Agency's decisions each indicate that it is a decision under §62, and each decision adequately informed Lucente of the Agency's actions. The "redeterminations" informed Lucente that (1) he improperly received unemployment benefits, (2) he was disqualified from receiving unemployment benefits, (3) he was subject to fraud penalties under § 54 and § 62 of the MESA, and (4) he had a right to appeal the Agency's "redeterminations." The Agency's decisions under §62 of the MESA were not subject to the requirements of §32a, nor were they otherwise rendered invalid by being labeled "redeterminations."

2. HERZOG (345074)

The Agency similarly contends that the circuit court erred in affirming the decisions of the ALJ and the MCAC that the Agency's "redeterminations" issued to Herzog were void because they were not preceded by "determinations," as required by §32a. We agree.

Herzog worked full-time for Custom Form from October 10, 2016, through March 3, 2017. From October 15, 2016, through November 12, 2016, Herzog also collected unemployment benefits from the Agency. On October 11, 2017, the Agency issued two "redeterminations" finding that Herzog was ineligible for unemployment benefits from October 15, 2016, through November 12, 2016, because he had obtained them through fraud by concealing his employment and earnings, and seeking to recover the allegedly fraudulently-obtained unemployment benefits under §62. The ALJ determined that the redeterminations were void because under §32a, the Agency was required to issue a determination before issuing a "redetermination," and that the MCAC had previously determined that such actions by the Agency violated the claimant's right to due process.

⁶ The MCAC's interpretation of §32a would make it virtually impossible for the Agency to carry out its statutorily-imposed task of recovering fraudulently-obtained benefits. Section 32a is strictly designed to give claimants and employers the opportunity to challenge an initial eligibility determination; it has nothing to do with fraud, which explains the exceedingly short timeframe. By contrast, §62, applicable to fraud determinations, gives the Agency up to three years to seek restitution, a tacit acknowledgment that fraud is unlikely to manifest itself immediately and instead often is uncovered only through the course of investigation. It would be nearly impossible for the Agency to detect fraud in the limited period of time provided by §32a, and the Legislature chose to provide the Agency a much more realistic timeframe in §62 to make fraud determinations and recover benefits wrongfully received.

At the time the Agency issued the “redeterminations” to Herzog, §32(f) provided that the issuance of a benefits check constituted a “determination” of eligibility for benefits. MCL 421.32(f). In addition, §32a, provided, in relevant part:

(1) Upon application by an interested party for review of a determination, upon request for transfer to an administrative law judge for a hearing filed with the unemployment agency within 30 days after the mailing or personal service of a notice of determination, or upon the unemployment agency’s own motion within that 30-day period, the unemployment agency shall review any determination. After review, the unemployment agency shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination, or may in its discretion transfer the matter to an administrative law judge for a hearing. If a redetermination is issued, the unemployment agency shall promptly notify the interested parties of the redetermination, the redetermination is final unless within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the unemployment agency for a hearing on the redetermination before an administrative law judge in accordance with section 33.

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue. [MCL 421.32a.⁷]

Section 62 provided, in relevant part:

(a) If the unemployment agency determines that a person has obtained benefits to which that person is not entitled, or a subsequent determination by the agency or a decision of an appellate authority reverses a prior qualification for benefits, the agency may recover a sum equal to the amount received plus interest The unemployment agency shall issue a determination requiring restitution within 3 years after the date of finality of a determination, redetermination, or decision reversing a previous finding of benefit entitlement. Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall not initiate administrative or court action to recover improperly paid benefits from an individual more than 3 years after the date that the last determination, redetermination, or decision establishing restitution is final. Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment

⁷ MCL 421.32a has since been amended. See 2017 PA 232 (effective July 1, 2018).

agency shall issue a determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in which the issue arose, or in the case of an issue of intentional false statement, misrepresentation, or concealment of material information in violation of section 54(a) or (b) or sections 54a to 54c, within 3 years after the receipt of the improperly paid benefits unless the unemployment agency filed a civil action in a court within the 3-year period; the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits; or the unemployment agency issued a determination requiring restitution within the 3-year period. . . .

(b) For benefit years beginning on or after October 1, 2000, if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the person obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the person shall, in addition to any other applicable interest and penalties, have his or her rights to benefits for the benefit year in which the act occurred canceled as of the date the claimant made the false statement or misrepresentation or concealed material information

(c) Any determination made by the unemployment agency under this section is final unless an application for a redetermination is filed in accordance with section 32a.

(d) The unemployment agency shall take the action necessary to recover all benefits improperly obtained or paid under this act, and to enforce all interest and penalties under subsection (b). . . . [MCL 421.62.⁸]

The statutory language of §62 clearly permitted the Agency to seek to recoup benefits that had been wrongfully paid within three years of the date that the claimant received the benefits. Here, the Agency acted in the manner contemplated by §62, seeking to recoup the wrongfully-obtained benefits well within the time limits for taking that action. In so doing, the Agency, acting under §62 to recover benefits improperly paid to Herzog, was not required to comply with the requirements of §32a. Because the Agency was not obligated to follow the procedures articulated in §32a, its failure to do so did not result in a denial of due process.

We also conclude that although the Agency's October 11, 2017 decisions to Herzog were titled "redeterminations" rather than "determinations," they were not rendered invalid by that label. We note that to some extent there had been a "determination" made, given that the issuance of a benefits check constitutes a "determination" of eligibility for benefits. MCL 421.32. But regardless of whether some portions of the Agency's decisions would have been better labeled as "determinations," the Agency was proceeding under §62, and therefore was not required to provide the process due under §32a.

⁸ MCL 421.62 has since been amended. See 2017 PA 231 (effective March 21, 2018).

Moreover, the Agency's "redeterminations" did in fact provide the process identified in §32a to protect the claimant from the dangers underlying inadequate notice. The Agency's "redeterminations" adequately informed Herzog of the Agency's actions against him, and (1) provided the relevant time period in which Herzog was ineligible to receive unemployment benefits, (2) stated that the reason for Herzog's ineligibility was on the basis of the Agency's finding that Herzog improperly received benefits through fraud, (3) informed Herzog of the amount he owed the Agency in restitution and fraud penalties, and (4) explained Herzog's right to appeal the "redeterminations." The decisions thus apprised Herzog of the Agency's decision regarding his eligibility for benefits, the amount he owed the Agency in restitution and fraud penalties, and his appellate rights, providing Herzog the opportunity to protest the Agency's findings by appealing the "redeterminations" to the ALJ. The process Herzog received was precisely the process contemplated by the statute, as he was fully put on notice of what was being decided and was given an opportunity to contest those issues.

3. CARLISLE (345943)

The Agency similarly contends that the circuit court erred in affirming the decisions of the MCAC, which affirmed the ALJ's decisions that the Agency's "redeterminations" issued to Carlisle were void because they were not preceded by "determinations" as required by §32a. We agree.

On October 4, 2017, the Agency issued two "redeterminations" to Carlisle, finding that Carlisle was ineligible for unemployment benefits from July 31, 2016, through November 19, 2016, because of his full-time employment with Rosendin, and that he "knowingly failed to disclose a material fact to obtain/increase [his] benefits." The Agency also issued a third "redetermination," indicating that Carlisle was required to pay back benefits he received from November 26, 2016, through December 31, 2016, because his "benefit year was terminated due to fraud, . . . resulting in an overpayment." The ALJ held that the Agency's failure to issue determinations before issuing the redeterminations rendered the redeterminations void, relying upon a previous decision of the MCAC that such actions by the Agency violated the claimant's right to due process under §32a. The MCAC and the circuit court affirmed the ALJ's decision.

At the time Carlisle received the disputed benefits and the Agency issued the "redeterminations," §62 provided that the Agency could seek to recoup benefits that were obtained by fraud within three years of the date that the claimant improperly received the benefits. MCL 421.62. The Agency acted in the manner contemplated by §62, seeking to recoup the wrongfully-obtained benefits well within the time limits for taking that action. In so doing, the Agency, acting under §62 to recover benefits improperly paid to Carlisle, was not required to comply with the requirements of §32a. Because the Agency was not obligated to follow the procedures articulated in §32a, its failure to do so did not result in a denial of due process. Accordingly, the redeterminations were not invalid simply because they were not preceded by earlier "determinations," nor were they invalid because they were labeled "redeterminations," rather than "determinations" under § 62(a) of the MESA.

In addition, the Agency's decisions adequately informed Carlisle of the Agency's recovery action against him. The "redeterminations" (1) provided the relevant time period in which Carlisle was ineligible to receive unemployment benefits, (2) stated the basis for the

finding of Carlisle's ineligibility for benefits, (3) informed Carlisle of the amount he owed the Agency in restitution and fraud penalties, and (4) explained Carlisle's right to appeal the "redeterminations." The "redeterminations" thus had all the components identified in §32a to protect the claimant from the dangers underlying inadequate notice under that statutory section, and the process received by Carlisle was precisely the process contemplated by the statute, as he was fully put on notice of what was being decided and was given an opportunity to contest those issues. We therefore detect no denial of due process.

We conclude that in each consolidated case, the circuit court did not apply correct legal principles when it affirmed the decisions of the MCAC, because the MCAC's decisions were contrary to law. In Case No. 342080 (Lucente), we reverse the order of the circuit court and the decision of the MCAC, and remand to the MCAC for a determination of the Agency's appeal to that tribunal from the ALJ's July 27, 2016 opinion, consistent with this opinion.

In Case No. 345074 (Herzog), we reverse the order of the circuit court, and the decisions of the MCAC and the ALJ, and remand to the ALJ for proceedings consistent with this opinion.

In Case No. 345943 (Carlisle), we reverse the order of the circuit court, and the decisions of the MCAC and the ALJ, and remand to the ALJ for proceedings consistent with this opinion.

We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Deborah A. Servitto
/s/ James Robert Redford