

Rev 04/11

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

DECISION

IN THE MATTER OF THE CLAIM OF:

EMPLOYER INVOLVED:

13

ADMINISTRATIVE LAW JUDGE: JOEL GERRING

S.S. NO.

APPEAL NO.

JURISDICTION

On the Employer timely protested a Unemployment Insurance Agency (Agency) Determination which held the Claimant eligible for benefits under Section 64(7)(28)(1)(e) of the Michigan Employment Security Act (Act). Pursuant to Section 32a(1) of the Act, the Agency bypassed the Redetermination and forwarded this matter to the Michigan Administrative Hearing System for hearing.

APPEARANCES

FINDINGS OF FACT

The Claimant worked as a home care giver for this Employer, servicing one client near full-time.

Claimants failure to service these additional clients amounts to a refusal to accept suitable work and should render her ineligible for benefits.

The Claimant contends that she had justifiable reasons for turning down these particular offers, noting that they were generally work offers for less than three hours per day

which simply did not justify the travel and other costs associated with accepting them. She indicated that the very first offer she received conflicted with the client she was already servicing while another she was willing to accept but the client chose to use a different care giver (after an interview process). Another instance of refusal cited by the Employer was apparently the result of a miscommunication, with the Employer attempting to reach the Claimant at a wrong number.

#### ISSUE

Is the Claimant disqualified for the receipt of unemployment benefits as a result of a refusal of suitable work, or did they fail to return to their customary self-employment, without good cause?

#### APPLICABLE LAW

Section 29(1)(e) of the Act provides:

(1) An individual is disqualified from receiving benefits if he or she:

~~(e) Failed without good cause to accept suitable work offered to the individual or to return to the individual's customary self-employment, if any, when directed by the employment office or the commission. An employer that receives a monetary determination under section 32 may notify the unemployment agency regarding the availability of suitable work with the employer on the monetary determination or other form provided by the unemployment agency. Upon receipt of the notice of the availability of suitable work, the unemployment agency shall notify the claimant of the availability of suitable work.~~

"Suitable work" is defined in Sections 29(6) and 29(7) of the Act:

(6) In determining whether work is suitable for an individual, the commission shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence. Additionally, the commission shall consider the individual's experience and prior earnings, but an unemployed individual who refuses an offer of work determined to be suitable under this section shall be denied benefits if the pay rate for that work is at least 70% of the gross pay rate he or she received immediately before becoming unemployed.

(7) Work is not suitable and benefits shall not be denied under this act to an otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(b) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(c) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

The burden of proving disqualification for refusal of an offer of work, including the suitability of the offered work, is on the employer. *Lasher v Mueller Brass Co.*, 62 Mich App 171 (1975).

#### REASONING AND CONCLUSIONS OF LAW

The Employer conceded that of the five examples cited where the Claimant alleged refused work, only two were refusals without a reasonable explanation. The Employer argues that the Claimant should still endeavor to accept jobs that will only provide her with an hour or two of work because this is the process by which she might build a client base of two or three clients to care for during the course of the week, ultimately amounting to full-time work. While this is a reasonable argument, two refusals without legitimate reason is not indicative of misconduct in the home health care industry.

The evidence presented does not suggest that the Claimant was being unreasonable with respect to the assignments she refused. The Claimant stated that she would prefer to work for a single client full-time, rather than two or three clients in different locations, but understands that this preference may not always be possible. As the Claimant is now, once again, working for this Employer as a home care giver, she is encouraged to accept and compile smaller assignments in order to increase her income, even if this does require additional travel throughout the course of her day. Obviously, there will come a point where refusing too many "small" assignments will be viewed as an overall failure to accept suitable work, rendering her ineligible for benefits. The Claimant should be aware of this possibility.