
GST MICHIGAN WORKS! POLICY 15-10 Change 1

TO: GST Michigan Works! Service Providers and Agency Staff

FROM: Jody Kerbyson, CEO

SUBJECT: TAA Redetermination and Appeals

EFFECTIVE: February 06, 2017

PROGRAMS AFFECTED: All Trade Adjustment Assistance (TAA) Acts

REFERENCES: Trade Adjustment Assistance (TAA) Manual dated (Dec 29, 2016).

RESCISSIONS: PI 15-10

BACKGROUND: All persons who are program participants under TAA funding sources received from the Talent Investment Agency (TIA), all contractors, grantees, sub-recipients, and all interested persons shall be afforded the opportunity to resolve, by means of administrative process, any alleged violation of the funding source, regulations, or grants received from TIA.

In this policy for the purposes of simplicity, TAA will be used interchangeably to refer to the different versions of the program and, as needed, the unique requirements of each version of this act will be referenced. While each of the versions of TAA has different eligibility rules, they provide essentially the same services and benefits.

POLICY:

Revisions to this policy are mainly for the sole purpose of updating TAA language, forms and contact information due to the new Trade Adjustment Assistance (TAA) Manual's release. All persons shall be allowed the opportunity to resolve and issues by way of the guidelines set forth in the GST Michigan Works! Agency's Grievance policy. This policy establishes a process for individuals to request redeterminations and appeals when they disagree with a determination made concerning their receipt of Trade Act program training, job search, waivers, relocation services and/or any other TAA eligibility decision made by the MWA. GST Michigan Works! will follow the formal process and procedures as outlines in the Trade Adjustment Assistance (TAA) Manual. That policy is outlined below.

Notice of Determination

A Notice of Determination to the adversely affected worker is issued by the MWA, regarding the decision to deny any of the following TAA benefits. This includes TAA Eligibility, Subsistence/Mileage Reimbursement, Waiver of TAA Training requirement, Job Search or Relocation Allowances. A denial determination is issued to a TAA worker in writing (mailed or personally served) using an appropriate trade form:

1. TAA-099: Eligibility Determination; or
2. TAA-501 Notice of Determination; or
3. TAA-802 Waiver of TAA Training Requirement; or
4. TAA-303 TAA Employer-Based Training Contract; or
5. TAA-923 TAA Training Application; or
6. TAA-402 Request for Relocation Allowances; or
7. TAA-401 Request for Job Search Allowances.

If a TAA benefit is denied, the worker must be immediately informed of their opportunity to grieve a determination. Where there is a disagreement with an initial decision/determination made by the GST Agency, the worker may protest the determination to the MWA within 30 calendar days from the date it was mailed or personally served. A worker may request a Redetermination on form TAA-502.

Request for Redetermination:

A Request for Redetermination may be filed at the MWA on TAA-502 or in writing within 30 calendar days. These requests should include a copy of the initial determination. If the written request is not on the Form TAA-502 "Request for Redetermination", it is not required and need not mention or contain the term "protest," "appeal," "request for redetermination," "grievance," etc. The written communication will be considered as a grievance, or request for redetermination, if it accomplishes either of the following:

- Express disagreement or dissatisfaction with the previously issued determination, from which an intent to request a redetermination can be implied, or
- Presents a state of new facts and/or contentions that are contrary to the facts and/or contentions cited in the determination previously issued.

A request for redetermination must be filed within 30 calendar days of the date the original decision/determination was mailed or personally served. When the 30th day after the mailing date or personally served, date falls on a Saturday, Sunday or legal holiday, the 30-day protest period will be extended to include the next day which is not Saturday, Sunday or a legal holiday. This applies even though the GST Service Center may be open on that holiday. There may also be certain days of the year that are not holidays, on which GST Service Centers are closed for other reasons. Since these days are not legal holidays, the 30-day protest period will be extended to include the next day that is neither a Saturday, Sunday, nor a legal holiday.

Notice of Redetermination

If the request for redetermination, is received within the 30-day time limit previously described, the designated MWA staff person reviews and reconsiders the entire file, including the initial determination and any new additional facts. Within 30 days from receipt of the Request for Redetermination, the MWA issues a Notice of Redetermination TAA-503, as a written statement. The Notice of Redetermination will affirm, modify, or reverse the original determination. It must be mailed or personally served to the worker.

The MWA must include the Form TAA-504 Appeal to ALJ, with the Notice of Redetermination to allow the worker the right to appeal to an ALJ with 30 calendar days of the issuance of the TAA-503, by requesting a hearing before an ALJ.

Application of Good Cause

For a Request of Redetermination that allows the application of Good Cause, the MWA must acknowledge the reasons for application of Good Cause on the Notice of Redetermination. "Good cause" will include, but not be limited to, the following situations:

- ◇ When an interested party has newly discovered material facts that, through no fault of his/her own, were not available at the time of the initial determination by the MWA, a request for redetermination made after the expiration of the statutory 30-day period would require a finding of "good cause" to be accepted.
- ◇ When the MWA has additional or corrected information.
- ◇ When an administrative clerical error has been discovered.

Denial of Good Cause

If the request for a redetermination is received after expiration of the 30-day period and good cause for reconsideration is not established, the request for redetermination shall be denied and the MWA staff person records the facts and reasons for denying good cause. The MWA prepares the denial on the Form TAA-503 Notice of Redetermination.

Whether or not good cause exists for the Request of Redetermination, the MWA must document and allow the participant to move onto the next step of the appeal process. After receiving a *Notice of Redetermination* (or denial of a request for redetermination due to untimely request and lack of good cause), an applicant may submit an appeal on Form TAA-504, *TAA Appeal to Administrative Law Judge* to the MWA within 30 calendar days after the mailing date or personally served date of the *Notice of Redetermination*, to request a hearing before an ALJ.

Requests for Appeal to an ALJ

If the worker disagrees with the Notice of Redetermination, an appeal to an ALJ may be submitted on Form TAA-504; TAA Appeal to ALJ. The worker is required to complete Section A of Form TAA-504 and submit it to the MWA within 30 calendar days after mailing, or personally served date of the Notice of Redetermination.

If the written request is not on Form TAA-504, *TAA Appeal to Administrative Law Judge* it is not required that it specifically mention or contain the term "protest," "appeal," "request for appeal to an ALJ," etc. The written communication will be considered as a request for an ALJ if it accomplishes *either* of the following:

- 1) Expresses disagreement or dissatisfaction with the previously issued redetermination, from which an intent to request an appeal to an ALJ can be implied, or
- 2) Presents a state of new facts and/or contentions that are contrary to the facts and/or contentions cited in the redetermination previously issued.

Upon receipt of the timely submissions of Form TAA-504: TAA Appeal to ALJ, the MWA will complete Section B or the form, or if the appeal is requested in writing it must include the following information.

- 1) MWA location where appeal was filed
- 2) Date appeal was filed (date MWA received appeal to ALJ)
- 3) MWA staff person receiving appeal
- 4) Applicant is appealing:
 ___ Redetermination, or
 ___ Denial of Request for Redetermination (Select only if deadline exception could not be applied to the Notice of Redetermination);
- 5) Date mailed or personally served to the applicant/participant
- 6) Mailed by (MWA representative name); and
- 7) Name of Director of MWA
- 8) MWA Signature: Signature of MWA Representative

Lack of Timeliness

When the Appeal to ALJ is received after expiration of the 30-day protest period, the designated staff person of the MWA, contacts the applicant to request information for the lack of timeliness.

The MWA is then required to issue a second Form TAA-503: *Notice of Redetermination* to address the sole concern of lack of timeliness, it and includes the application, or lack thereof, of Good Cause. Upon submission of the second Form TAA-503: *Notice of Redetermination*, the MWA must include a new Form TAA-504: TAA Appeal to AJL form. The worker is then held to the 30-day period to the ALJ.

If the adversely affected worker does not respond to the Notice of Redetermination timely, the steps are repeated until a timely appeal to an ALJ is received. Subsequently, once a timely appeal to an ALJ is received, all previous Notice of Redeterminations and all appeals to the ALJ are sent forward for scheduling.

*At the hearing, the ALJ will address the lack of timeliness and then will proceed with the facts related to the original determination.

Submission of ALJ Hearing Request

MWAs must forward requests for appeal and all related documentation, within seven days, to:

Ms. Jimelle Blakley, TAA State Coordinator
Michigan Talent Investment Agency
State of Michigan
201 N. Washington Square, 5th Floor
Lansing, MI 48913
Email: blakleyj1@michigan.gov
Fax: (517) 373-7794
Phone: (517) 241-8629

All documentation from previous decisions and any additional material must be presented to the ALJ. The appeal package should include the determination, request for redetermination, redetermination (or denial of redetermination), request for appeal to an ALJ, and all supporting documents used in making the determination and/or redetermination. Such documents may include TAA Worker Benefit Orientation sign-in sheets, Notice of Certification letters, records of services provided or contact with applicants, letters to applicants, or other applicable documents.

The TIA staff will review the document(s) for accuracy and completeness, and forward the appeal to the MAHS for scheduling. If there is a need for revision to the document(s), the TIA will return the appeal documents to the designated staff person at the MWA and request modifications and/or additional information. If the MWA wishes to change its designated staff person, please contact the TIA.

The adversely affected worker and MWA will receive written notice of the hearing, detailing the date, time, location, and telephone number of the hearing. The record made at the hearing constitutes the official record of the appeal. The ALJ will afford all interested parties a reasonable opportunity for a fair hearing and, unless the appeal is withdrawn, make a finding as to the facts, apply the law to those facts, and issue a decision as to the case. The parties will be notified as to the ALJ's decision, setting forth the findings of fact upon which the decision is based, together with the reasons for the decision. If the applicant, MWA, or the TIA disagrees with the decision of the ALJ, either may request an appeal to the MCAC, in accordance with the instructions provided with the decision within 30 days of issuance. An appeal to the MCAC is governed by Sections 34 and 35 of the Michigan Employment Security Act, MCL 421.1 et seq., and corresponding administrative rules.

ACTION:

GST Michigan Works! Service Providers and Agency staff shall take the appropriate actions necessary to ensure all participants and their files meet all the directives of this policy issuance. Service Provider officials shall ensure the information contained in this policy is disseminated to all appropriate staff.

INQUIRES:

Questions regarding this policy issuance should be directed to John Anderson 810-233-5974 Ext. 159 or JulAnn Kuenzli 989-635-3561 Ext. 230.

SIGNED:



Jody Kerbyson, CEO

2-6-17

Date