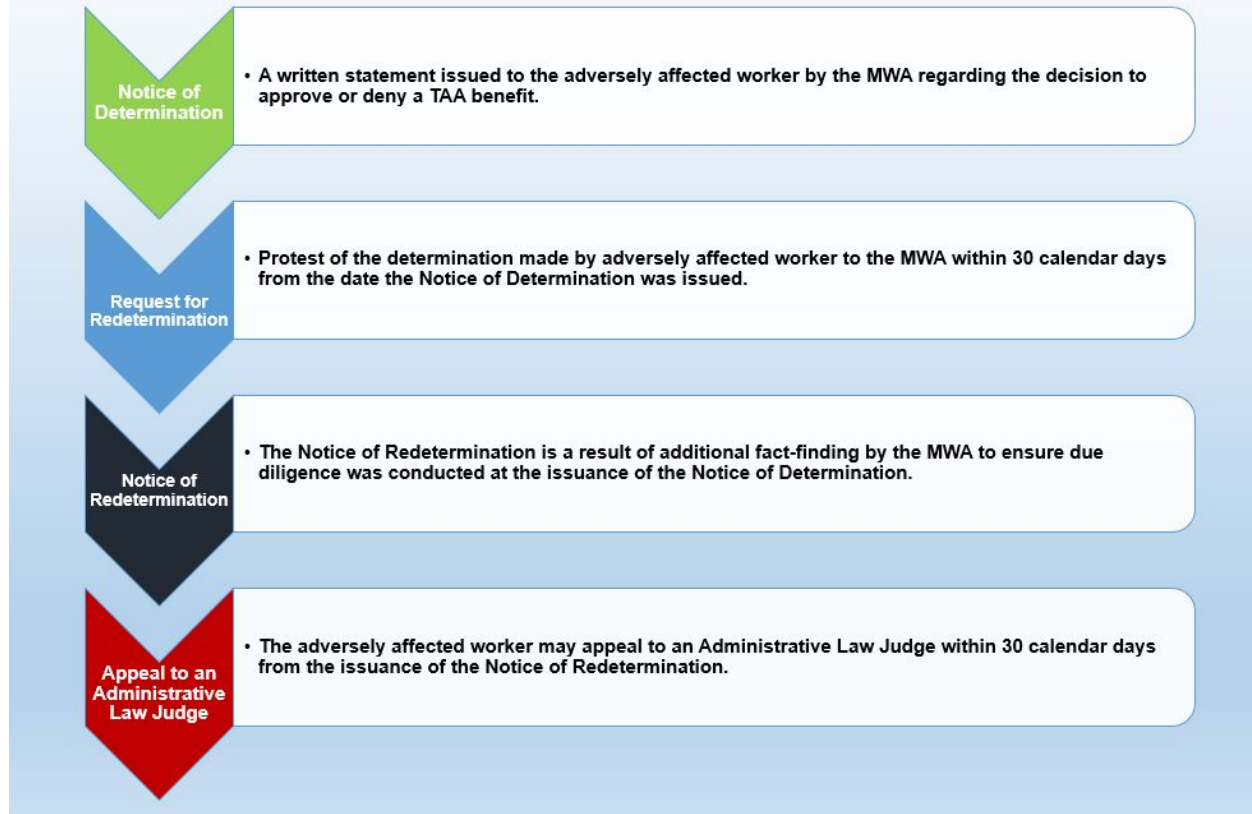


Chapter 17 – TAA Protest and Appeal Process

The TAA Protest and Appeal process applies to all TAA Laws. The following protest and appeal process shall apply to protests of a determination, requests for redeterminations, notice of redeterminations, and appeals to an ALJ. Adversely affected workers may protest and appeal TAA eligibility, training, a waiver from training, job search allowance, relocation allowance, or any other TAA eligibility decision made by the MWA, pursuant to the TAA program regulations 20 CFR 617.50 and 617.51.

Please Note: The MWAs are required to implement a local TAA Protest and Appeal Policy. The required steps for the TAA Protest and Appeal process include the following:



Section 17-1: Notice of Determination

A determination is a written statement issued to the adversely affected worker by the MWA regarding the decision to approve or deny one of the following TAA benefits:

- 1) TAA eligibility.
- 2) Training.
- 3) Subsistence/Mileage Reimbursement.
- 4) Waiver of TAA Training Requirement.
- 5) Job Search Allowances.
- 6) Relocation Allowances.

A Notice of Determination is made official once it has been completed by the MWA and is formally issued to the adversely affected worker (mailed or personally served) on one of the following forms:

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

If a TAA benefit is denied, the adversely affected worker must be immediately informed of the local TAA Protest and Appeal process. The adversely affected worker may protest the determination to the MWA within 30 calendar days from the date it was mailed or personally served. A determination can be protested by submission of a Request for Redetermination.

Section 17-2: Request for Redetermination

A *Request for Redetermination* must be filed at the MWA within 30 calendar days after the date the original determination was mailed or personally served. When the 30th day after the mailing date, or personally served date, falls on a Saturday, Sunday, or a legal holiday, the 30-day protest period will be extended to include the next day that is not a Saturday, Sunday, or legal holiday. This applies even though the MWA office may be open on that holiday. There may also be certain days of the year that are not holidays on which the MWA offices 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.

Adversely Affected Worker

The adversely affected worker may protest the determination within 30 calendar days from the date mailed or personally served, by submission of a Request for Redetermination to the MWA. Adversely affected workers may request the reconsideration of determination on the Form TAA-502: *Request for Redetermination* or in writing. If the MWA receives a protest greater than 30 days from the issuance of the determination, lack of timeliness must be addressed as outlined in Section 17-3: Notice of Redetermination.

If the written request is not on the Form TAA-502: *Request for Redetermination*, it is not required that it specifically mention or contain the term “protest,” “appeal,” “request for redetermination,” etc. The written communication will be considered as a request for redetermination if it accomplishes *either* of the following:

- 1) Expresses disagreement or dissatisfaction with the previously issued determination from which an intent to request a redetermination 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 determination previously issued.

Please Note: Any adversely affected worker or an MWA that wishes to bypass the Notice of Redetermination and request a hearing before an ALJ may do so on his or her own stationery. The requesting party is responsible for submitting proof that this was completed. The WDA does not have a form for this purpose.

If the WDA chooses to bypass the Notice of Redetermination step, approval of other parties to bypass to the ALJ is not required.

Section 17-3: Notice of Redetermination

MWA

If the Request for Redetermination is received *within* the 30-day time limit, a designated merit staff person of the MWA, other than the individual who initially issued the original determination and reviews, reconsiders the entire file including the initial determination and any new additional facts. Within 30 calendar days from receipt of the Request for Redetermination, the MWA issues a Notice of Redetermination as a written statement (which includes the date of issuance to the adversely affected worker) or by using the Form TAA-503: *Notice of Redetermination*. The Notice of Redetermination will affirm, modify, or reverse the original determination. The Notice of Redetermination may be mailed, or personally served, to the adversely affected worker.

Additionally, the MWA must include the Form TAA-504: *Appeal to ALJ* with the Notice of Redetermination to allow the adversely affected worker the right to appeal to an ALJ within 30 calendar days of the issuance of the Notice of Redetermination, by requesting a hearing before an ALJ.

Lack of Timeliness

Please Note: 'Good Cause' includes circumstances that reasonably prevent an adversely affected worker from complying with a requirement or deadline.

If the Request for Redetermination is received *after* the expiration of the 30-day time limit, a designated merit staff person of the MWA, other than the individual who initially issued the original determination, will consider the reason for the lack of timeliness. The MWA will communicate with the adversely affected worker to determine if Good Cause is applicable.

Whether or not Good Cause is applicable to the *Request for Redetermination*, the lack of timeliness will be addressed at the ALJ hearing.

Application of Good Cause

For a Request for Redetermination that allows the application of Good Cause, the MWA must acknowledge the reasons for application of Good Cause on the Notice of Redetermination.

Denial of Good Cause

If the reason for lack of timeliness provided by the adversely affected worker does not meet the definition of Good Cause, the MWA issues the Form TAA-503: *Notice of Redetermination*. Without application of Good Cause, the Form TAA-503: *Notice of Redetermination* denies the Request for Redetermination. However, upon issuance of the Notice of Redetermination, the Form TAA-504: *TAA Appeal to ALJ* is provided. The adversely affected worker may proceed to request a hearing before the ALJ within 30 calendar days of issuance of the Notice of Redetermination.

Although, it was determined that Good Cause is not applicable, and the Request for Redetermination is denied; the Appeal to an ALJ hearing may occur. However, the lack of timeliness is addressed by the ALJ prior to the discussion of the original determination.

Section 17-4: Appeal to an ALJ

A *TAA Appeal to an ALJ* must be filed within 30 calendar days after the date the Notice of Redetermination was mailed or personally served. When the 30th day after the mailing date, or personally served date, falls on a Saturday, Sunday, or a legal holiday, the 30-day protest period will be extended to include the next day, which is not a Saturday, Sunday, or legal holiday. This applies even though the MWA office may be open on that holiday. There may also be certain days of the year that are not holidays, on which the MWA offices 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.

Adversely Affected Worker

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

If the written appeal is not on Form TAA-504: *TAA Appeal to ALJ*, 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 a request for an ALJ hearing 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.
- 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.

MWA

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

- 1) The MWA location where appeal was filed.
- 2) Date appeal was filed (date the MWA received appeal to ALJ).
- 3) The 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 (the MWA representative name).
- 7) The MWA Signature: Signature of the MWA’s Representative.

Lack of Timeliness

If the Appeal to an ALJ is received *after* expiration of the 30-day period, the MWA must consider the reason for the lack of timeliness. A designated merit-staff person of the MWA will communicate with the adversely affected worker to consider if Good Cause is applicable for the reason 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, and it 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 ALJ* form. The adversely affected worker is then held to the 30-day period to appeal 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 Notices of Redetermination and all appeals to the ALJ are sent forward for scheduling.

Please Note: At the ALJ hearing the lack of timeliness will be addressed, and it will then be determined if the ALJ will hear the facts related to the original determination.

Submission of ALJ Hearing Request

Subsequent to completion of Section B of Form TAA-504: *TAA ALJ*, the MWAs must forward requests for appeal and all related documentation within seven days to:

Jimelle Blakley, TAA State Coordinator
Michigan Talent Investment Agency
State of Michigan
201 North Washington Square, 5th Floor
Lansing, MI 48913
Email: blakleyj1@michigan.gov
Fax: 517-241-9846
Phone: 517-930-4169

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 WBO sign-in sheets, Notice of Certification letters, records of services provided, or contact with applicants, letters to applicants, or other applicable documents.

The WDA 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 WDA 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 WDA.

The adversely affected worker and the 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 to the case. The parties will be

notified of 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, the MWA, or the WDA disagrees with the decision of the ALJ, any one of them 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.

TAA Protest and Appeal Flowchart

