STATE OF MICHIGAN

COURT OF CLAIMS

KELLIE SAUNDERS, et. al.,

Plaintiffs,

v

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY and JULIA DALE,

Defendants.
_____/

OPINION AND ORDER

Case No. 2022-000007-MM

Hon. Brock A. Swartzle

Plaintiffs received unemployment benefits, but the Unemployment Insurance Agency subsequently determined that some or all of those benefits were paid in error. To say that the Agency's efforts at identifying and recouping erroneously paid benefits have been uneven and challenging would be an understatement. In response to these efforts, plaintiffs filed this putative class action, raising three claims based on the Michigan Constitution's due-process clause, Const 1963, art 1, § 17.

The claims are distinct and can be summarized as follows: (1) Count I, defendants violated MCL 421.32a by making monetary redeterminations more than one year after the original monetary determinations (the "one-year" count); (2) Count II, defendants violated MCL 421.62 by failing to make a waiver review sua sponte prior to collection efforts and by failing to provide an administrative process for a claimant to seek a waiver (the "waiver" count); and (3) Count III, defendants violated MCL 421.62 by engaging in collection efforts during the administrative-appeal process (the "administrative-process" count). As part of their relief sought, plaintiffs have

moved for preliminary-injunctive relief. For their part, defendants have opposed that motion and, instead, have moved for summary disposition, arguing that this Court lacks jurisdiction over plaintiffs' claims and plaintiffs failed to state a claim on which relief can be granted.

For the reasons that follow, defendants' motion for summary disposition will be GRANTED IN PART and DENIED IN PART, and plaintiffs' motion for a preliminary injunction will be GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

Before addressing the facts of this case, it is worth noting that the Agency entered into a stipulated settlement agreement in federal district court. On review of that agreement, the federal district court entered an order dismissing the case under certain specific conditions, including those identified in the settlement agreement. *Zynda v Zimmer*, order of the United States District Court for the Eastern District of Michigan, issued February 2, 2017 (Case No. 2:15-cv-11449). In relevant part, the order requires that: (a) the Agency not recover any overpayments from a claimant until the claimant had an opportunity to "challenge the (re)determination and/or exhaust all appeals"; (b) the Agency must continue to make unemployment-benefit payments during the pendency of any administrative-appeal process; and (c) the Agency must suspend collection activity for all cases that have been returned to the Agency for reconsideration until that decision becomes final. While the *Zynda* settlement itself is not at issue in this case, the conditions ordered by the federal district court in that case inform this Court's analysis of what the Agency must do with regard to alleged overpayments and appeals.

Plaintiffs are current and former claimants for unemployment benefits under the Michigan Employment Security Act, MCL 421.1 *et seq*. They allege due-process violations, not any causes of action based on the Act itself. The claims can be separated into the following three categories:

One-Year Count. The one-year-count plaintiffs are Kellie Saunders, Dawn Davis, Joshua Eggleston, Jennifer Hillebrand, and Eleni Zestos. Each of the one-year-count plaintiffs allegedly received a monetary determination and then, more than one year later, they also received a monetary redetermination that reduced or eliminated their weekly benefit amount and assessed overpayments. Saunders challenged her monetary redetermination through the administrative-appeal process and received a favorable determination from the administrative law judge. The Agency did not appeal that decision and apparently was unaware of the administrative law judge's decision for several months. As a result, it continued to bill Saunders for overpayments in direct contravention of the administrative law judge's ruling directing it to stop the practice. Davis, Eggleston, and Hillebrand timely appealed their monetary redeterminations; those protests are still pending and have not been resolved, though Eggleston's appeal was apparently "cancelled" by the Agency in April 2022. The complaint does not allege that Zestos filed a protest against her monetary redetermination.

Waiver Count. The waiver-count plaintiffs are all of the named plaintiffs. These plaintiffs allege that the Agency issued monetary determinations to each of them before later determining that it overpaid benefits to them and assessing overpayments to them. Plaintiffs allege that overpayments were the result of Agency error, but the Agency did not conduct an internal review to see if any plaintiffs qualified for a waiver. It also failed to provide plaintiffs with a mechanism to request such a waiver.

Administrative-Process Count. The administrative-process-count plaintiffs are Erik Varga, Lisa Shephard, Jennifer Larke, Anna Logan, Eggleston, Hillebrand, and Cheryl Scarantino. Each of these plaintiffs received a notice from the Agency that it would seek to recover overpayments from them. Plaintiffs filed timely protests, but the Agency has allegedly engaged in collection activity against them before a final determination of their protests.

Plaintiffs moved for preliminary injunction, asking this Court to order the Agency to suspend all collection activities against: (1) all claimants who have received redeterminations issued more than one year after the initial determination; (2) claimants who have not received an administrative-waiver review or against claimants who have not received a determination regarding their eligibility for a waiver; and (3) all claimants who have not yet received a final determination on the merits of their claims. Defendants opposed plaintiffs' motion, arguing that they were not likely to succeed on the merits and that they did not suffer any irreparable harm.

Defendants then moved for summary disposition. Defendants argue that they are entitled to summary disposition under MCR 2.116(C)(4) and (8). Regarding subsection (C)(4), defendants contend that plaintiffs failed to exhaust their administrative remedies; regarding subsection (C)(8) they argue that defendants failed to identify a viable due-process claim because their claims alleged statutory rather than constitutional violations. Plaintiffs responded, arguing that they were not required to exhaust their administrative remedies and the Agency's actions deprived them of due process even though they were related to the Act.

Plaintiffs subsequently filed a motion for supplemental briefing to advise this Court of additional factual developments, which this Court granted. Most of the factual developments were continuations of the activity plaintiffs alleged in their complaint. For example, plaintiffs informed

this Court about Saunders's administrative appeal and its result and of the new developments regarding the appeals of Eggleston and Varga no longer appearing in the Agency's system.

This Court held a hearing on May 17, 2022. The parties argued consistently with their briefs and addressed Saunders's administrative appeal. Counsel for the Agency stated that the Agency was unaware of the results of Saunders's adminsitrative appeal until recently. Counsel did not dispute the assertion by plaintiffs' counsel that the Agency did not appeal the administrative law judge's ruling in favor of Saunders.

II. ANALYSIS

A. DEFENDANTS' MOTION FOR SUMMARY DISPOSITION

Although plaintiffs filed their motion for a preliminary injunction before defendants filed their motion for summary disposition, defendant's motion will be addressed first because this Court cannot enter a preliminary injunction for a claim that is dismissed. Defendants moved for summary disposition under MCR 2.116(C)(4) and (8). Summary disposition is warranted under MCR 2.116(C)(4) if a plaintiff fails to exhaust available administrative remedies, because the failure to exhaust deprives the trial court of subject-matter jurisdiction. *Cummins v Robinson Twp*, 283 Mich App 677, 690-691; 770 NW2d 421 (2009). That said, "where the administrative appellate body cannot provide the relief sought, the doctrine does not apply." *Id*. at 691. If the Legislature has expressed an intent to grant a state agency exclusive jurisdiction over a particular type of dispute, "courts must decline to exercise jurisdiction until all administrative proceedings are complete." *L & L Wine & Liquor Corp v Liquor Control Commn*, 274 Mich App 354, 356; 733 NW2d 107 (2007) (quotation marks and citation omitted). "A motion under Subrule (C)(4) may be supported or opposed by affidavits, depositions, admissions, or other documentary

evidence." *Meisner Law Group, PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 713-714; 909 NW2d 890 (2017).

"A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone." *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998) (citation omitted). This Court may grant the motion "if the opposing party has failed to state a claim on which relief can be granted." *Dalley v Dykema Gossett PLLC*, 287 Mich App 296, 304; 788 NW2d 679 (2010) (cleaned up). "When deciding a motion under (C)(8), this Court accepts all well-pleaded factual allegations as true and construes them in the light most favorable to the nonmoving party." *Id*. at 304-305. "Summary disposition on the basis of subrule (C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Id*. at 305 (quotation marks and citation omitted). To the extent that information outside the pleadings is required, this Court will analyze those issues under subsection (C)(10). See *Ellsworth v Highland Lakes Dev Assoc*, 198 Mich App 55, 57-58; 498 NW2d 5 (1993). Under subsection (C)(10), "[s]ummary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020).

1. ADMINISTRATIVE-APPEAL PROCESS

The Act directs that claims for unemployment benefits "shall be made pursuant to regulations prescribed by the unemployment agency." MCL 421.32(a). The Act also declares that the Agency "shall designate representatives who shall promptly examine claims and make a determination on the facts." *Id*. Review of determinations regarding benefits is to occur at the administrative level, within the Agency. MCL 421.32a(1). Any appeals are to be referred to the Michigan Administrative Hearing System for hearing before an administrative law judge. MCL

421.33(1). An interested party may appeal a decision rendered by an administrative law judge to the recently renamed Unemployment Insurance Appeals Commission. MCL 421.33(2); MCL 421.34; MCL 445.2032. Finally, judicial review is available in circuit court, following the entry of a final administrative order. MCL 421.38. See also *Dep't of Licensing & Regulatory Affairs/Unemployment Insurance Agency v Lucente*, ___ Mich ___, ___; ___ NW2d ___ (2021) (Docket Nos. 160843; 160844); slip op at 9-11.

Relevant here, a claimant sometimes "is paid a benefit they were not entitled to receive." *Lucente*, ___ Mich at ___; slip op at 6. When this happens, the Agency is directed to recover overpayments. *Id*., citing MCL 421.62. The Act applies time limits to the Agency's ability to recover overpayments, depending on whether the Agency is engaged in a "determination" or "redetermination," or whether fraud is at issue. *Id*. at ___; slip op at 17-18. See also MCL 421.62; MCL 421.32a. The Agency is required first to issue a "determination" when it contends the claimant receives a benefit to which that claimant was not entitled and when the Agency seeks to impose restitution. MCL 421.62(a). See also *Lucente*, ___ Mich at ___; slip op at 26. And as noted earlier, the Act provides the right to an administrative appeal of determinations and redeterminations. See MCL 421.33. See also *Lucente*, ___ Mich at ___; slip op at 28.

Importantly, plaintiffs have a property interest in unemployment benefits. See, e.g., *Goldberg v Kelly*, 397 US 254, 261-262; 90 S Ct 1011; 25 L Ed 2d 287 (1970); *Cahoo v SAS Analystics, Inc*, 912 F3d 887, 900 (CA 6, 2019). Thus, they are entitled to due-process protections before their unemployment benefits are taken or negatively impacted.

2. ONE-YEAR COUNT

With respect to their first count, plaintiffs argue that they are not required to exhaust their administrative remedies because the Agency's actions amount to a constitutional violation that cannot be remedied though the administrative process established by the Act. See *Papas v Mich Gaming Control Bd*, 257 Mich App 647, 664; 669 NW2d 326 (2003). But plaintiffs argue that the Agency could not issue the redeterminations at issue because they were untimely *as defined by statute*; they do not argue that a redetermination in and of itself violates due process. They do not argue, as a general matter, that the Agency deprived them of the traditional protections afforded by due process, i.e. notice and an opportunity to be heard regarding the issue. See *Lucente*, ___ Mich at ___; slip op at 28. Indeed, the redeterminations are only allegedly untimely because, according to plaintiffs, they fall outside the permissible time limit established by the Act. Accordingly, although plaintiffs assert that their claim is constitutional in nature, their argument that the redeterminations are untimely is clearly statutory. The time limit was created by the Legislature, not our Constitution.

Saunders's case typifies the issue with plaintiffs' argument. Saunders filed an administrative appeal after her redetermination and received a favorable judgment from the administrative law judge. Although the Agency apparently was unaware of this for months afterwards, that failure by the Agency does not establish a due-process violation for all of the other one-year-count plaintiffs. Saunders was able to obtain a favorable ruling through the administrative-appeal process established in the Act. In doing so, the system worked as the Legislature designed it, albeit with a significant delay caused by the Agency not being aware of the administrative law judge's decision. Nevertheless, Saunders demonstrates that it is possible for the one-year-count plaintiffs to obtain the relief they seek through the administrative-appeal

process. Accordingly, they must exhaust their administrative remedies before bringing their claims to this Court. Defendants are entitled to summary disposition under MCR 2.116(C)(4) of the one-year counts brought by Davis, Eggleston, Hillebrand, and Zestos because they have not exhausted their administrative remedies, though the dismissal will be without prejudice, as explained below. Saunders has exhausted her administrative remedies, so defendants are not entitled to summary disposition under MCR 2.116(C)(4) against her.

That said, defendants could still be entitled to summary disposition against Saunders under MCR 2.116(C)(8) or (10). The developments in Saunders's administrative appeal all took place after plaintiffs filed their amended complaint and, therefore, generally cannot be considered for (C)(8) purposes, see *Stolberg*, 231 Mich App at 258, but they can be considered under (C)(10), see *Sherman*, 332 Mich App at 632. Saunders has exhausted her administrative remedies and received a favorable determination from the administrative law judge. But the Agency apparently was unaware of that decision and continued to charge her for the untimely redetermination. By doing so, the Agency denied her a *meaningful* opportunity to be heard because it did not abide by the administrative law judge's decision. See, e.g., *Bonner v City of Brighton*, 495 Mich 209, 238-239; 848 NW2d 380 (2014). Accordingly, the Agency is not entitled to summary disposition regarding Saunders's one-year-count claim.

There is a certain irony, of course, that Davis, Eggleston, Hillebrands, and Zestos must exhaust their administrative remedies, while Saunders did so, but the Agency ignored the favorable ruling that she obtained from the administrative law judge. Based on the current record, however, the Court concludes that the Agency's error with respect to Saunders' favorable ruling was an isolated, inadvertent error. If another plaintiff receives a similar favorable ruling, the Court expects

that the Agency will be more diligent in following that ruling. If not, then that plaintiff can renew the one-year count against the Agency.

3. WAIVER COUNT

The waiver count concerns plaintiffs' allegations that defendants violated their rights to due process by failing to undertake a sua sponte waiver review or to provide notice and an administrative process for claimants to request a waiver. Under MCL 421.62(a), the Act provides that:

> Except in a case of an intentional false statement, misrepresentation, or concealment of material information, *the unemployment agency shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience and shall waive any interest*. If the agency or an appellate authority waives collection of restitution and interest, except as provided in subdivision (ii), the waiver is prospective and does not apply to restitution and interest payments already made by the individual. [Emphasis added.]

In contrast with the one-year count, defendants have not pointed to a specific administrative process that applies to plaintiffs' claims regarding overpayment waivers. Plaintiffs allege that there is no process available for them to seek an overpayment waiver, and defendants' briefing does not dispute this allegation. In fact, on pages 13-14 of their summary-disposition brief, defendants assert that the Agency "is hoping to implement a waiver program as quickly as possible in accordance with federal guidance," and estimates that it could take until February 2023 to do so. Consequently, defendants are not entitled to summary disposition under MCR 2.116(C)(4) of the waiver count.

Turning to MCR 2.116(C)(8), plaintiffs argue that the Agency violated their due-process rights by not making a sua sponte waiver determination or, in the alternative, providing a procedure for claimants to seek such a waiver. Essentially, plaintiffs allege that they have not received notice

or an opportunity to be heard regarding the waiver. But due process does not guarantee notice and an opportunity to be heard in the abstract; rather, those guarantees must be attached to a liberty interest, such as the right to property. See *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 605; 683 NW2d 759 (2004). Accordingly, plaintiffs must establish a property right or other liberty interest in the waiver to trigger due-process protections.

As an initial matter, it is simply not the case that plaintiffs were entirely without notice or any guidance with respect to a waiver. The Legislature set forth the general standards and requirements for seeking a waiver in MCL 421.62, and there is nothing in the current record to suggest that claimants could not ask for a waiver during the normal administrative-appeal process. An agency is not required to provide additional guidance or process when the statutory framework is itself sufficient. *Twp of Hopkins v State Boundary Comm'n*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 355195); slip op at 12.

Even setting that aside, plaintiffs cannot show that they were deprived of a liberty interest that would implicate due-process concerns. MCL 421.62(a) provides that, absent fraud, misrepresentation, or concealment of material information, "the unemployment agency shall waive recovery of an improperly paid benefit if repayment would be contrary to equity and good conscience and shall waive any interest." The phrase "contrary to equity and good conscience" means any of the following:

> (i) The claimant provided incorrect wage information without the intent to misrepresent, and the employer provided either no wage information upon request or provided inaccurate wage information that resulted in the overpayment.
>
> (ii) The claimant's average net household income and household cash assets, exclusive of social welfare benefits, were, during the 6 months immediately preceding the date of the application for waiver, at or below 150% of the annual update of the poverty guidelines most recently published in the Federal Register by

> the United States Department of Health and Human Services under the authority of 42 USC 9902(2), and the claimant has applied for a waiver under this subsection. . . .
>
> (iii) The improper payments resulted from an administrative or clerical error by the unemployment agency. A requirement to repay benefits as the result of a change in judgment at any level of administrative adjudication or court decision concerning the facts or application of law to a claim adjudication is not an administrative or clerical error for purposes of this subdivision. [MCL 421.62(a)(*i*)-(*iii*).]

Thus, the right to a waiver is dependent upon the Agency making the requisite finding regarding equity and good conscience. There is no property right or other liberty interest in a claimant's desire or expectation that the Agency will apply a waiver to a debt that was previously determined to be owed. See *Millar v New Mexico Dep't of Workforce Solutions*, 304 P3d 427, 432 (NM App, 2013).[1] Indeed, an overpayment waiver is not automatic, but is instead limited to instances where certain factual findings are made by the Agency, including whether the claimant had the intent to misrepresent. See MCL 421.62(a). A claimant's unilateral expectation of receiving a waiver does not give rise to a liberty interest in a waiver. See *Upper Peninsula Power Co v Village of L'Anse*, 334 Mich App 581, 597; 965 NW2d 658 (2020).

Plaintiffs' complaint and briefing repeatedly faults the Agency for failing to have in place a process for claimants to seek overpayment waivers. Plaintiffs cite federal Unemployment Insurance Program Letters that detail various procedures for overpayment waivers. They fault the Agency for not implementing such a process. The Letters generally impose standards on states as a condition for receiving federal grants, see, e.g., Unemployment Insurance Program Letter No. 1-16, § 4, but they do not themselves create a liberty interest or a private right of action for a claimant.

[1] While cases from foreign jurisdictions are not binding, they may be relied upon as persuasive authority. *Hiner v Mojica*, 271 Mich App 604, 612; 722 NW2d 914 (2006).

Accordingly, plaintiffs are unable to state a claim on which relief can be granted because the allegations in the complaint do not support the conclusion that a liberty interest exists in an overpayment waiver. Thus, defendants are entitled to summary disposition under MCR 2.116(C)(8) regarding the waiver count.

4. ADMINISTRATIVE-PROCESS COUNT

Defendants' briefing has not made a specific argument about whether exhaustion of administrative remedies is required with respect to the administrative-process count. The allegations in the administrative-process count assert that defendants' practice of engaging in collection efforts while the administrative process remains pending is unconstitutional. By making these allegations, plaintiffs are not raising an issue that can be decided in the administrative process. Rather, they are alleging that the entire process, i.e., one that takes alleged property interests during the pendency of administrative proceedings, is unconstitutional. This type of claim is not subject to exhaustion requirements, as an administrative agency lacks authority to decide whether the administrative scheme itself is unconstitutional. See, e.g., *Nalbandian v Progressive Mich Ins Co*, 267 Mich App 7, 10 n 2; 703 NW2d 474 (2005). Accordingly, defendants are not entitled to summary disposition of the administrative-process count under MCR 2.116(C)(4).

Turning to the MCR 2.116(C)(8) analysis, the question then becomes what process is due to plaintiffs. The federal Supreme Court has described due process as "a flexible concept that varies with the particular situation." *Zinermon v Burch*, 494 US 113, 127; 110 S Ct 975; 108 L Ed 2d 100 (1990). For instance, to determine whether a predeprivation hearing is required, the Court must weigh the following factors:

> "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and

> the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." [*Mathews v Eldridge*, 424 US 319, 335; 96 S Ct 893; 47 L Ed 2d 18 (1976).]

A hearing is generally required before a state can terminate a recipient's welfare benefits. *Goldberg*, 397 US at 264. That said, in other instances, a postdeprivation hearing can satisfy due process. *Zinermon*, 494 US at 128. The question of whether a predeprivation hearing or postdeprivation hearing is required is a question of law. *Locurto v Safir*, 264 F3d 154, 170 (CA 2, 2001).

The private interest involved in the receipt of unemployment benefits is undoubtedly high, given that the benefits are intended to help offset a claimant's loss of employment and are intended to sustain a claimant's economic livelihood for a period of time. See *Goldberg*, 397 US at 261; *McAvoy v HB Sherman Co*, 401 Mich 419, 439-440; 258 NW2d 414 (1977). Indeed, the federal Supreme Court has explained that the risk of erroneous deprivation of unemployment benefits or welfare benefits is high, while the cost to the government in receiving a fast and final adjudication of the matter is relatively low in comparison. *Goldberg*, 397 US at 262-263. As for whether other procedures suffice when welfare benefits are at issue, the *Goldberg* Court held that "when welfare is discontinued, only a pretermination evidentiary hearing provides the recipient with procedural due process." *Id.* at 264. The determining factor, the Court explained, was that:

> termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy. [*Id.*]

The predeprivation hearing need not, however, be a "judicial or quasi-judicial trial," and can instead be an administrative hearing that affords the claimant notice and an opportunity for a hearing before an impartial decisionmaker. *Id.* at 266-269.

Plaintiffs have demonstrated that they have a significant property interest in the receipt of unemployment benefits. The alleged cost to the state to provide additional procedures before depriving plaintiffs of their unemployment benefits is comparatively low. Even when it is ultimately determined that overpayments should be collected, the Agency should already be waiting until the determination becomes final before collecting any overpayments, as this is precisely what the Agency agreed to do—and, more importantly, was ordered by the federal district court to do—in the *Zynda* settlement. This Court does not consider it a burden for the Agency to follow the law, whether that law is set forth in a statute or court order.

Accordingly, plaintiffs have stated a claim on which relief can be granted with respect to Count III, and defendants' motion for summary disposition under MCR 2.116(C)(8) with respect to that count is denied.

B. PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Turning to plaintiffs' motion for preliminary injunction, only Saunders's one-year count and the administrative-process count remain. A party moving for preliminary injunctive relief bears the burden of demonstrating entitlement to relief based on the following factors:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012) (quotation marks and citation omitted).]

This type of relief is "an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Id*. (quotation marks and citation omitted).

Our Supreme Court has described the irreparable-harm factor as "an indispensable requirement to obtain a preliminary injunction." *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 9; 753 NW2d 595 (2008). And it is not any type of harm that will suffice; rather, the harm must be *irreparable*. Harm is not irreparable if there exists an adequate remedy at law, such as payment of monetary damages. *Id*. at 10. Nor can a plaintiff satisfy the burden on a motion for preliminary injunction by merely speculating about what might happen. *Id*. at 11.

As a general rule, financial harm does not amount to irreparable harm. See *id*. at 10 n 20. But see *Slis v State*, 332 Mich App 312, 361; 956 NW2d 569 (2020). That said, even the temporary deprivation of a constitutional right is an irreparable harm. *Garner v Mich State Univ*, 185 Mich App 750, 764; 462 NW2d 832 (1990). As discussed earlier, the Agency is depriving plaintiffs of due process by seeking repayment of unemployment benefits before completing the administrative-review process. The Agency's actions, therefore, are irreparably harming plaintiffs with respect to their third count. The same is true with respect to Saunders on the first count.

As for the likelihood of success on the merits, plaintiffs are likely to succeed on the merits of the third count. The Agency is likely depriving plaintiffs of their right to due process by seeking repayment of unemployment benefits before completing the administrative-review process. The same is true regarding Saunders and her one-year-count claim. The remaining factors also weigh in favor of a preliminary injunction. The harm to the public interest of allowing the Agency to violate due process rights to recover unemployment benefits is significant, especially when

compared to the nominal burden it would impose on the Agency to hold predeprivation hearings it already promised it would conduct in the *Zynda* settlement. The Agency's actions place a significant burden on plaintiffs and, therefore, weigh in favor of a preliminary injunction. Yet again, the same is true regarding Saunders and her one-year-count claim. The Agency is already required to honor the decisions of administrative law judges (unless successfully appealed), and, as already noted, being required to follow the law is not a burden that this Court will recognize.

In summary, plaintiffs are entitled to preliminary injunctive relief to prevent the Agency from engaging in collection efforts until after the administrative process has run its course. Plaintiffs have alleged a particularized constitutional violation—the denial of procedural due process—that amounts to irreparable harm, they appear to be able to succeed on the merits of this claim, and the remaining factors weigh in favor of granting preliminary injunctive relief. The same is true with Saunders and her one-year-count claim.

III. CONCLUSION

Based on the foregoing, the Court orders as follows:

IT IS HEREBY ORDERED that Defendants' March 14, 2022, motion for summary disposition is GRANTED regarding the waiver count (Count II in its entirety) and all of the one-year-count plaintiffs except Saunders (Count I except Saunders (without prejudice)), and that motion is DENIED regarding the administrative-process count (Count III in its entirety) and Saunders's one-year-count claim (Count I as to Saunders).

IT IS HEREBY FURTHER ORDERED that plaintiffs' March 10, 2022, motion for preliminary injunction disposition is DENIED regarding the waiver count (Count II in its entirety) and all of the one-year-count plaintiffs except Saunders (Count I except Saunders), and that motion

is GRANTED regarding the administrative-process count (Count III in its entirety) and Saunders's one-year-count claim (Count I as to Saunders).

IT IS SO ORDERED. This order does not adjudicate the last claim and this is not a final order that closes the case.

Date: June 13, 2022

Hon. Brock A. Swartzle
Judge, Court of Claims