

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

In the Matter of)
)
MELEGALENUU SOFA) OAH No. 21-0292-PUA
)
) Agency No. P20 318

APPEAL DECISION

Docket Number: P20 318

Hearing Date: March 23, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Melegalenuu Sofa

None

CASE HISTORY

The claimant, Melegalenuu Sofa, appealed an October 19, 2020 determination that denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on February 25, 2021. Under the terms of referral, an administrative law judge (ALJ) hears and decides the appeal under procedures specific to PUA appeals. AS 44.64.060 procedures do not apply.

The hearing was recorded and took place on March 23, 2021. Ms. Sofa testified under oath. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant.

The issue before the ALJ is whether the claimant meets the eligibility requirements of the Act.

FINDINGS OF FACT

Ms. Sofa established a claim for Pandemic Unemployment Assistance benefits effective the week ending April 11, 2020. The Division determined that she was not eligible because she was not impacted by COVID-19 in a manner that made her a covered individual under the PUA program.

Ms. Sofa has four children, ages 17, 9, 7, and 2. The oldest three children are school-aged and attend Anchorage School District schools. The youngest was born in 2018 with a heart condition that makes her susceptible to complications when she is ill. That child does not attend day care in part because of her medical condition.

Until she started working part-time as a food delivery driver in March 2020, the claimant had been a stay-at-home parent for the last several years. Her most recent

prior attachment to the labor market was in 2017, when the claimant worked as a paid personal care assistant, caring for her mother in Hawaii.

The claimant and her family moved from Hawaii to Seattle in 2018 because of the youngest child's medical needs, including her need for heart surgery. The claimant was a full-time caregiver for her children in 2018 and 2019.

The family moved to Alaska in December 2019. Starting in late February or early March 2020, after the COVID-19 pandemic had begun, the claimant applied to work as a delivery driver for Door Dash. She started making deliveries shortly thereafter. She works as an independent contractor or gig worker. The work is app-based; the claimant gets jobs by making herself available through the app. She has control of her work schedule and works when it is convenient for her.

The claimant worked as a Door Dash driver from March 2020 through the date of the hearing in March 2021. She did not estimate the number of hours per week or per month that she puts into the job. She estimated that she earns \$200 to \$300 each week, depending on the number of deliveries she does. Her work schedule appears to be highly flexible. At times she does deliveries while some of her children are in the car.

The claimant asserted that her ability to do Door Dash work was adversely impacted by the pandemic because she needed to be home with her children after their schools were closed to in-person learning. She also explained that her youngest child was sick in early January 2020. Health professionals at Providence Hospital determined that she had a viral illness. The claimant traveled to Seattle with the child later in January 2020 to seek additional medical advice. By that time, the child's symptoms had improved. The claimant was told by health care providers that the child did not have COVID-19.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

(3) COVERED INDIVIDUAL.—The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

- (aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - (bb) a member of the individual's household has been diagnosed with COVID-19;
 - (cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
 - (dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
 - (ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
 - (ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - (gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
 - (hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
 - (ii) the individual has to quit his or her job as a direct result of COVID-19;
 - (jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
 - (kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or
- (II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended

benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

Unemployment Insurance Program Letter (UIPL) 16-20, Change 2 Issued by U.S. Department of Labor on July 21, 2020

Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16- 20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA. With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

APPLICATION

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance defines a covered individual as a person who is not eligible for unemployment benefits under any other State or Federal program and who is unemployed or partially unemployed because of one or more listed reasons related to the COVID-19 pandemic.

The claimant has not recently worked in covered employment that would qualify her for a claim for regular or other unemployment benefits.

The claimant held that she was impacted by the pandemic because she was unable to work while her children’s schools were closed to in-person learning and because she could not work in January 2020 when her youngest child was sick with a viral illness. Regrettably, her circumstances do not fit the parameters for PUA eligibility.

The claimant's youngest child was ill in January 2020, when testing for COVID-19 was difficult to obtain. Ms. Sofa was told the child did not have COVID-19. Even if she had, however, the illness did not impact the claimant's income or employment. Ms. Sofa had not been connected to the labor market for several years when the illness occurred.

The claimant started a new part-time job as an independent contractor in March 2020, when the pandemic was starting to spread rapidly. Because this was a new job, the claimant cannot show that the pandemic caused a significant diminution of her business services from prior years. The job was intended to be a flexible one in which she arranged her working hours around her children's schedules. She continued to do the job throughout the pandemic.

Ms. Sofa's older children's schools were closed in mid-March 2020 because of the COVID-19 pandemic. The claimant's position is that she could have worked more hours and earned more as a Door Dash driver if her children had not been attending online school from home. Though that was perhaps possible, the causal connection is not sufficiently clear. More likely than not, the claimant's ability to work additional schooltime hours as a Door Dash driver was limited primarily by her need to care for her youngest child. Due to the child's medical condition, the claimant could not place her in daycare and she had no other childcare arrangements for her.

The fact that the older children needed support doing online school undoubtedly created additional obstacles to earning income during school hours. However, there is no demonstrated causal connection between the claimant's need to be home during online school hours and a loss of self-employment income in 2020.

DECISION

The determination issued on October 19, 2020 is **AFFIRMED**. The claimant is not eligible for pandemic unemployment assistance benefits.

Dated: March 26, 2021

[REDACTED]
For: Kathryn Swiderski
Administrative Law Judge

APPEAL RIGHTS

This decision is final unless an appeal is filed in writing to the Commissioner of Labor and Workforce Development within 30 days after the decision is mailed to each party. The appeal period may be extended only if the appeal is delayed for circumstances beyond the party's control. A statement of rights and procedures is enclosed.

CERTIFICATE OF SERVICE

I certify that on March 26, 2021 the foregoing decision was served on Melegalenuu Sofa (by mail). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

[REDACTED] _____
Office of Administrative Hearings