

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF LABOR & WORKFORCE DEVELOPMENT**

In the Matter of)	
)	
SIDNEY WILLIAMS)	OAH No. 21-0874-CAP
_____)	Agency No. P20 080

DECISION OF THE COMMISSIONER

I. Introduction

This is an appeal by claimant Sidney Williams to the Commissioner of Labor and Workforce Development, regarding an Appeal Tribunal decision concerning Ms. Williams's Pandemic Unemployment Assistance (PUA) eligibility. The Tribunal affirmed in part and modified in part the original determination by the Division of Employment and Training Services (Division), and found that Ms. Williams is not a "covered individual" under the CARES Act (Public Law 116-136) for the weeks ending March 7, 2020 through March 28, 2020, and the weeks ending July 4, 2020 and continuing through the week ending January 2, 2021. Ms. Williams appealed the decision objecting to perceived missteps by the Division, as well as to the coverage cut off dates.

The Appeal Tribunal decision is AFFIRMED.

II. Facts

A. The original determination

The claimant's last employment connection to the workforce ended on July 19, 2019 for reasons unrelated to the COVID-19 pandemic. On March 1, 2020 she established a claim for PUA benefits and was approved as a "covered individual" under the CARES Act for the weeks ending March 7, 2020 through May 23, 2020. She also qualified for Federal Pandemic Unemployment Compensation (FPUC) beginning the week ending April 4, 2020, and Pandemic Emergency Unemployment Compensation (PUEC), a program based on her last unemployment claim, beginning March 29, 2020.

In the months following, the Division realized that two mistakes had been made regarding Ms. Williams's benefits claims. Initially it was discovered that there were weeks that the claimant had simultaneously received both PUA and PUEC benefits in violation of PUA program requirements that qualified PUA recipients cannot be eligible for unemployment benefits under any other State or Federal program, including PUEC. Therefore, the Division began deducting benefits previously paid to Ms. Williams under PUA from ongoing weekly benefits from the other assistance programs.

Then, after a closer examination of her PUA application, the Division determined that she was not eligible for PUA benefits at all during the previously approved period of coverage from the weeks ending March 7 through September 12, 2020, as she had not met the criteria of being a “covered individual” under the CARES Act. The claimant did not have sufficient attachment to the labor market, having last held a job in 2019, nor was she unemployed for any of the COVID-19 reasons set forth in the Act. The Division sought recoupment of overpaid PUA benefits during this period.

The weeks ending September 26, 2020 through October 10, 2020 the Division determined that the claimant was eligible for PUA benefits, as she was diagnosed with COVID-19.

B. The initial appeal

The claimant objected to this coverage redetermination by the Division and filed an appeal with the Appeals Tribunal. She asserted that she should have been eligible for PUA benefits beginning March 1, 2020 as she was advised by her medical provider to self-quarantine due concerns involving the COVID-19 pandemic and underlying health issues. She objected to the requirement that she had to be “attached to the labor market” to be eligible for benefits.

The Appeals Tribunal affirmed and modified the initial determination by the Division. The Tribunal determined that at no point was the claimant eligible for PUA benefits during any weeks in her eligibility period. This included the weeks she was diagnosed with the COVID-19 virus, as the diagnosis did not cause her to become unemployed or partially unemployed as required under the CARES Act. The decision provided information about how to seek a waiver of repayment of any overpaid PUA benefits.

C. The appeal to the Commissioner

Ms. Williams timely appeals the decision. She raises seven points, five grievances regarding the PUA application and appellate processes, and two substantive issues. The latter are objections to the denial of benefits during the time she had COVID-19, and after the [January] 6, 2021¹ decision.

III. Procedural History

The Office of the Commissioner referred this appeal to the Office of Administrative Hearings (OAH) on May 5, 2021. A telephonic case planning conference was held on May 21,

¹ It is presumed that in referencing a February 6, 2021 decision that Ms. Williams is referring to the Division decision authored by Appeals Officer Rhonda Bunnell distributed on January 6, 2021.

2021. The parties agreed to a scheduling order that assigned a deadline of June 14, 2021 for the submission of optional written arguments. Optional requests for oral arguments were to be made by June 17, 2021.

On June 9, 2021 Ms. Williams timely submitted a brief outlining seven issues on appeal. On June 4 and June 11, 2021, the Division submitted two responsive memoranda. Neither party requested oral arguments, and the record closed on June 17, 2021.

IV. Analysis

A. Procedural grievances

a. Overpayment waiver

The claimant asserts that after learning she owed the Division overpaid PUA funds she did not receive sufficient information about how to submit an overpayment waiver based on financial hardship. Additionally, correspondence from the Division has been confusing and she cannot ascertain how much in PUA overpayments she owes.

Although the Division's January 2021 decision explained that a form to request waiver of repayment could be requested from the Division's Benefit and Payment Control (BPC) unit, Ms. Williams described considerable difficulty locating the form, then getting help from the Division understanding and completing the waiver. After submitting it timely, at the time of the case planning conference in June 2021 she still had not received a response from the BPC.

Currently it is a matter of state discretion whether to exercise waiver authority.² In its June 4, 2021 responsive pleading the Division acknowledged that the waiver application process is confusing, explaining that it is a new program, and that the BPC is awaiting federal guidance regarding its implementation. The Division confirmed that as of June 10, 2021 Ms. Williams had been overpaid a total of \$11,470 in PUA benefits, and had repaid \$7,626.³ As Ms. Williams indicated that repayment of the remaining approximately \$2,633 she still owes in overpaid PUA benefits would cause her financial hardship, the BPC adjusted her repayment schedule. Instead of seizing the entire \$370 per week she is eligible to receive through PEUC, only 50% will be diverted to the outstanding PUA repayment debt. As soon as the remaining debt is satisfied in full the claimant will receive her entire PEUC benefits payment.⁴

² U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) No. 20-21, May 5, 2021.

³ June 11, 2021 Memorandum from DOL. *See also* June 10, 2021 Alaska Department of Labor form BB58 sent as an attachment to the June 11, 2021 email from Tara Sidor, Employment Security Analyst III for the Division.

⁴ The Division noted that the claimant has not currently been receiving any benefits as she has been in travel status since she informed the Division she was leaving for Utah on April 3, 2021. If she has since returned, she is to notify the Division at 907-465-5552.

If Ms. Williams wants to challenge the disposition of her waiver request, there is a separate appeal process for that. The decision presently before the Commissioner is a decision solely on eligibility.

b. Filing quarterly claims

Ms. Williams claims that the Division has denied her PUEC benefits as she has failed to file a claim for unemployment compensation (UC). She objects to this, believing the weeks she must file a new UC claim she is not paid benefits. As she must file each calendar quarter, the claimant asserts that this results in her not being paid any benefits for four weeks out of the year.

The PEUC program permits qualified people who have exhausted their unemployment compensation payments to receive additional weeks of benefits.⁵ The Division requires claimants to test each calendar quarter for eligibility for an unemployment insurance claim. Only if an individual is deemed ineligible for unemployment benefits can the person receive federal funds from programs such as PEUC.⁶ If there is a lag period between the submission of the quarterly test and the approval of PEUC benefits, addressing this issue falls outside the jurisdiction of this Tribunal, which is reviewing only PUA eligibility in this case. If a quarterly test claim indicates the claimant is *not* eligible for UC, then (assuming other eligibility criteria are met) PUA benefits are paid for all weeks, retroactively if necessary.

c. Witness was not called at the Appeals Tribunal hearing

Ms. Williams asserts that she requested that Sue Nichols, a State employee, be called as a witness during the initial Appeals Tribunal hearing. Seemingly based on a telephonic conversation the two had at some point, Ms. Williams believes that Ms. Nichols's testimony would have corroborated Ms. Williams's argument that the Division is, or at some point in the past was, mistaken in its calculation of the amount of her overpayment of PUA benefits.

The role of the Tribunal is to evaluate evidence presented that is pertinent to the appeal. If a witness's testimony would not be helpful or relevant, that individual may not be called to testify.⁷ The January 6, 2021 decision issued by the Tribunal includes a thoughtful and detailed review of the emergency benefits Ms. Williams received under several state and federal relief programs in 2020. It includes a breakdown of the dates benefits were issued and the amounts Ms.

⁵ The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2107 Pandemic Emergency Unemployment Compensation.

⁶ U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) No. 09-21, December 30, 2020, Attachment I, p. 5, Program Progression Chart.

⁷ 8 AAC 85.153(c).

Williams was paid in the context of addressing the sole issue on appeal; whether the claimant met the eligibility requirements of the CARES Act. It does not include a determination regarding an amount of any overpayment, because that was outside the scope of what the Appeals Tribunal was reviewing. Hence, the testimony would not have been relevant.

d. Inaccurate 1099-MISC tax form

Ms. Williams asserts that her 1099-MISC tax form inappropriately includes all benefits she was paid by the Department of Labor under various relief programs. She believes that payments issued under some programs should be tax exempt, and that it would be better policy to list the benefits from different programs separately because that would enable claimants to more easily allocate taxable and nontaxable amounts. She also raises the concern that the 1099-MISC lists all payments made without regard to whether the Department might subsequently determine that they were overpayments that should be recouped.

Both frustrations are understandable, although the undersigned (who is a tax judge) suspects that the second concern is one that the Department of Labor could not solve without running afoul of federal reporting requirements. In any event, both topics are far beyond the scope of a PUA eligibility appeal. Ms. Williams is encouraged to seek guidance from the Internal Revenue Service. She may discover that she can file a Form 1040-X and that she may be entitled to a tax refund.

B. *Substantive Arguments*

a. Denial of PUA claim during COVID illness

Ms. Williams's husband tested positive for the COVID-19 virus on September 14, 2020. She provided care for him in the days following, then tested positive for the virus herself on September 22, 2020. She was cleared by public health officials on October 12, 2020. Ms. Williams applied for PUA benefits the weeks she and her husband were ill. She asserts the Appeals Tribunal erred in denying her PUA benefits during this time, as she was a "covered individual" under the provisions of the Cares Act that includes people diagnosed with COVID-19 and/or providing care for a family or household member who has contracted the virus.⁸

As noted by the Appeals Tribunal, however, the determination of whether a PUA applicant is a "covered individual" has two prongs. While Ms. Williams qualifies under the cited provisions of the Cares Act addressing the COVID-19 illness, she overlooks the additional

⁸ The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance, (3)(A)(I)(aa)-(cc).

criteria that claimant *must have become unemployed or partially unemployed because* of one of the COVID-19 related reasons listed, as well. Based on the evidence presented, neither the time she spent caring for her husband, nor the weeks she herself was infected with the virus impacted her ability to maintain a job, as she was not employed. As she last held a paying position in 2019 and provided no evidence of having recently been offered a job, there was no establishment that she had the requisite “recent attachment” to the job market.⁹

The Tribunal appropriately denied Ms. Williams PUA benefits during the weeks she and her husband were sick with COVID-19 as she was not a “covered individual” under the Act.

b. Denial of future PUA eligibility

Ms. Williams objects to the Division’s determination that she is not eligible for PUA benefits after the date of its January 6, 2021 decision. The claimant misunderstands the language of the decision, which states that she is denied benefits “through the date of the decision.” It does not address whether Ms. Williams could become a “covered individual” under the Act and eligible for PUA benefits at some point in the future.

c. Excessive recoupment

Ms. Williams calculates that, as of the date of briefing this appeal in June, \$14,070 had been deducted from her PEUC benefits to reimburse her PUA overpayment. That would substantially exceed the size of the overpayment. She seems to have developed the \$14,070 figure through an oversimplified calculation of her own, rather than any actual accounting of week-by-week benefits and deductions.

DETS has provided an explanation and backup documents showing that the amount recouped to date was much lower than \$14,070. In any event, an appeal of the January 6, 2021 PUA eligibility ruling is not the venue for reviewing this accounting issue from much later in the year relating to net benefit payments under PEUC. While I do not believe there has been an error, if there has been, the remedy would be through a PEUC appeal or a court proceeding.

IV. Conclusion

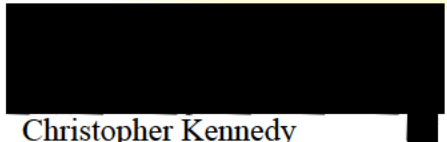
The decision of the Appeal Tribunal is **AFFIRMED**. Ms. Williams is not a “covered individual” under the CARES Act (Public Law 116-136) for the weeks ending March 7, 2020

⁹ U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) No. 16-20, April 5, 2020, Attachment I. *See also* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) No. 16-20, July 21, 2020, Change 2.


through March 28, 2020, and the weeks ending July 4, 2020 and continuing through the week ending January 2, 2021.

FURTHER APPEAL may be had from this decision by filing a Notice of Appeal in Superior Court for the State of Alaska within 30 days from the date of mailing of this decision, as provided in AS 23.20.445, AS 44.62.560-570, and the Rules of Appellate Procedure of the State of Alaska. Unless an appeal is filed within the 30-day period, this decision is final.


Recommended September 7, 2021:


Christopher Kennedy
Administrative Law Judge

Adopted September 7, 2021:


Dr. Tamika L. Ledbetter
Commissioner

CERTIFICATE OF SERVICE. I certify that on December 7, 2021 the foregoing decision was served by mail and email on Sidney Williams. A copy has been emailed to the UI Technical Team and appeals@alaska.gov.


Office of Administrative Hearings