

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

In the Matter of)	
)	
SHERRY PETRANOVICH)	OAH No. 21-2031-CAP
_____)	Agency No. P21 283

DECISION OF THE COMMISSIONER

Sherry Petranovich appealed from a June 11, 2021 Appeal Tribunal decision.¹ That decision modified a Division of Employment and Training Services determination finding that she was ineligible for Pandemic Unemployment Assistance (PUA) benefits after the week ending May 2, 2020. The Tribunal decision extended eligibility to the week ending July 3, 2020² but denied subsequent eligibility.

INTRODUCTION

Under AS 23.20.435, an appeal to the Department by a party is a matter of right only if the decision of the Tribunal reverses or modifies the Division's initial determination, or if a question arising under AS 23.20.383 is presented.³ Here, because the Tribunal modified the Division's determination, Ms. Petranovich's appeal is one of right. Ms. Petranovich does not seek to reverse the Tribunal decision; she seeks to modify it to extend her period of eligibility so as to erase the overpayment of PUA benefits. To do so, Ms. Petranovich must show that the Tribunal made a clear error of material fact or a clear error of law. No issue of Department policy is implicated in this appeal.

Ms. Petranovich represented herself in this appeal; the Division was represented by Mr. Alonzo Rumfelt. At the case planning conference, Ms. Petranovich requested oral argument, which was granted in an Order issued October 27, 2021.⁴ Oral argument was heard on

¹ AS 23.30.430 provides that the Tribunal "decision is final unless further review is initiated under AS 23.20.435 within 30 days after the decision is mailed to each party at the party's last address of record or delivered to the party." In this case, the appeal period, calculated under Alaska Rule of Civil Pro. 6 and 8 AAC 85.151(b), expired on July 15, 2021, after which the Tribunal decision is final. Ms. Petranovich's appeal was registered August 25, 2021, well after the expiration of the appeal period. Thus, Ms. Petranovich's appeal could be denied as untimely. However, the record shows that Ms. Petranovich sent an email the Department of Labor and Workforce Development notifying the Department that she wished to file an appeal on July 20, 2021. Based on this written attempt to appeal, her appeal was filed five days late. The Division did not raise an objection to considering the appeal based on this delay of less than a week; in the absence of Division objection, we exercise discretion to accept the appeal. AS 23.30.430.

² Although the decision refers to the week ending July 3, 2020, the payment week ends on Saturday, so the proper date is July 4, 2020.

³ 8 AAC 85.155(b).

⁴ Ms. Petranovich failed to submit a memorandum as directed in the scheduling order.

December 1, 2021. During the argument, the parties agreed that Ms. Petranovich was to submit documents to Mr. Rumfelt who would forward them for reconsideration of her case. The decision was suspended to allow this effort at resolution to proceed. Ms. Petranovich, whose delay in response was, she reported, caused by difficulty with her phone plan, finally confirmed that she had not heard anything from the appropriate section and the suspension was lifted to allow this matter to proceed to decision.

Ms. Petranovich argues on appeal that, having once demonstrated she was impacted by COVID-19, she should continue to receive PUA benefits as long as she complies with the technical requirement (quarterly testing, weekly filings and work search). She argues that nothing changed on July 3, 2020 that made COVID-19 no longer a factor. Essentially, Ms. Petranovich claims she would have continued to work for the Stovall family as a personal care assistant and general helper through the present but for the COVID-19 pandemic. In support of this claim, she submitted a statement by Mrs. Stovall.⁵

The Division concedes that the Tribunal's choice of a date when Ms. Petranovich became ineligible is "a little murky" but does not assert that the Tribunal erred in application of the law. In particular, the Division argues that eligibility is not a "one-time" event but is assessed on a week-by-week basis, so that from week to week a person may be found eligible or ineligible. It was, the Division argues, Ms. Petranovich's responsibility to provide proof of eligibility beyond July 3, 2020, and it invited her to do so. Her failure to do so requires that the Tribunal decision be sustained.

Ms. Petranovich's appeal does not support a finding of clear error by the Tribunal based on the facts before it. The statement she provided does not materially contradict prior evidence relied on by the Tribunal. While there is evidence to support termination of PUA benefits, there is, as the Division noted, a lack of evidence to support the date of termination of PUA benefits chosen by the Tribunal. However, there was no evidence to support a claim of continuing eligibility beyond the week ending July 3, 2020 based on Ms. Petranovich's testimony at the hearing. Recognizing that the burden of establishing continuing eligibility rests on the claimant, and that she has been provided ample opportunity to do so, the Tribunal's decision is AFFIRMED.

⁵ The Commissioner may take evidence or may remand the matter to take additional evidence. 8 AAC 85.155(c)(1). For reasons explained below, the evidence submitted by Ms. Petranovich makes no material difference to the outcome on appeal.

FINDINGS OF FACT

The following Tribunal findings of fact were supported by substantial evidence in the record and are adopted by the Department.

- Sherry Petranovich worked as a personal care attendant and general helper for an elderly woman, Claritha Stovall, off and on for several years. She worked part time, but regularly, through 2019. Ms. Petranovich had no other clients in 2019.
- Ms. Petranovich is not certified and was paid privately by the Stovall family.
- Sherry Petranovich submitted records showing she worked “almost exactly” 20 hours/week through March 27, 2020 for Mrs. Stovall, notwithstanding her claim for PUA benefits effective the week ending March 7, 2020.
- Mrs. Stovall has physical and mental impairments that are slowly progressing.
- Mr. Stovall has a drywall business that takes him out of town frequently, but he also works locally.
- Ms. Petranovich’s work was not essential to the functioning of the Stovall household.
- Mr. Stovall’s business experienced a drop in demand, so that there was less money in the household.
- Ms. Petranovich’s services were terminated March 27, 2020 due to concerns about COVID-19.
- Ms. Petranovich’s services were never reinstated, notwithstanding the availability of free vaccines against COVID-19 and increased understanding of its mechanism of transmission.
- Ms. Petranovich admitted in testimony to the Tribunal that she “didn’t want to mess with my unemployment” by returning to paid employment with the Stovalls.

In addition to adopting the Tribunal’s findings, the following facts are found based on public records and the record on appeal in this case:

- Governor Dunleavy issued a declaration of public health disaster emergency on March 11, 2020. Pursuant to his emergency powers, the Governor issued a number of COVID-19 Health Mandates, the last on October 15, 2020, and Health Orders, the last on January 15, 2021. On February 14, 2021, the last extension of the Governor’s declaration of emergency expired. Thereafter, the Commissioner of Health and Social Services has

issued a number of COVID-19 Response and Recovery Health Advisories, but no mandates.

- Governor Dunleavy’s Health Mandate 016, effective April 24, 2020, permitted non-essential public facing businesses and non-public facing businesses to resume operations under conditions, although those “at high risk of infection are encouraged to continue to self-quarantine.”
- On March 9, 2021, Governor Dunleavy announced that COVID-19 vaccine would be available to all residents of Alaska age 16 and above.
- Claritha (“Cleo”) Stovall stated that Ms. Petranovich “continued to stop by” although she was no longer working and that Ms. Petranovich had a family connection, in that Ms. Petranovich’s daughter knows Mrs. Stovall’s son. (R., Ex. 1, pg. 15).
- Ms. Petranovich testified that after the stay-at-home order,⁶ Mr. Stovall came home at the same time Ms. Petranovich had to go home because of COVID-19.
- Ms. Petranovich testified that Mrs. Stovall did not work; Ms. Petranovich thought she had “social security or public assistance.”
- Ms. Petranovich testified in hearing on June 10, 2021 that there were three reasons she had not gone back to work by the time of the hearing: (1) Mr. Stovall’s “construction company has slowed way down, and so he’s not working a lot so they don’t have a lot of money like they did before;” (2) “He (Mr. Stovall) *is* home all the time now and this whole COVID thing hasn’t completely lifted;” and (3) “Also with me in this situation with my unemployment, we didn’t want to mess with anything or injure anything by me going back to work until the hearing.” She also testified that “I think that the primary reason [I have not returned to work for the Stovalls] is the finances and [not being] able to pay me because of COVID.”

⁶ Presumably COVID-19 Health Mandate 011, issued March 27, 2020, mandating all persons except those engaged in essential health care services, public government services, and essential business activities, to remain at their place of residence and practice social distancing. It was superseded by COVID-19 Health Mandate 016, effective April 24, 2020.

- Ms. Petranovich submitted a handwritten statement signed by “Cleo Stov---”⁷ which was prepared after this appeal and submitted December 7, 2021.⁸

DISCUSSION

The CARES Act of 2020 was designed to “mitigate the economic effects of the COVID-19 pandemic in a variety of ways.” PUA was specifically established to provide temporary benefits for those who had exhausted regular unemployment compensation as well as to provide temporary benefits for those who would not otherwise qualify for unemployment compensation because, for example, they lacked sufficient work history or were self-employed. PUA is only available to those able to demonstrate that they are (1) not eligible for regular unemployment compensation, (2) otherwise able and available for work but unemployed or partially unemployed or unable or unavailable for work because of a COVID-19 related reason listed in the Act; and, (3) for benefits claimed after December 27, 2020, able to provide documentation substantiating their employment.⁹

A. Eligibility for PUA benefits is established on a weekly basis; when one reason ends, the claimant must establish another reason to continue to receive benefits.

Ms. Petranovich established her claim to PUA benefits under 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(ee), which provides:

(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—

⁷ The statement reads as follows:

12/7/21

I Claritha Stovall certify [*sic*] that this statement is true under penalty of perjury that I would still have Sherry Petranovich working for me from July 11th 2020 till the current time. She is a good honest hard worker. We hope to always have her around helping and working for us God willing.

Thank you,
Cleo Stov---
Claritha Stovall

907-310-0930

If you have any further questions feel free to give me a call.

⁸ It is not clear that Ms. Petranovich sent a copy of this document to Mr. Rumfelt as required by the scheduling order. It was forwarded to Mr. Rumfelt by the Office of Administrative Hearings on January 6, 2022 after learning that he had not received it.

⁹ CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance, amended by Consolidated Appropriations Act, Public Law 116-260, Div. N, Title II, subchapter IV, Sec. 241 (a), codified as 15 U.S.C. § 9021: Citations to the Act hereafter will use the codified form.

...
(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;

Ms. Petranovich testified that she went home and stayed home when the Governor's order directed people to stay home (March 27, 2020). She continued to refer to her compliance with this "hunker down" or "stay-at-home" order as the basis for her claim of eligibility for PUA benefits. For example, in an interview on January 8, 2021, she responded to the question as to when she would return to work for Ms. Stovall, "*As soon as the hunker down lifts. As soon as there is no chance of her getting sick.*"¹⁰ Unfortunately, Ms. Petranovich fails to recognize that the Governor's order was not static. Beginning April 24, 2020, the Governor encouraged businesses, even non-essential businesses, to reopen and individuals were no longer required to stay home. Ms. Petranovich has not presented any evidence that *she* was required to self-quarantine as a result of COVID-19 after the week ending April 25, 2020.

Eligibility is determined on a weekly basis,¹¹ so every week of claimed benefits, the claimant must self-certify that the individual meets the requirements of the Act. As the U.S. Department of Labor explains,

The individual must provide the initial reason for his or her unemployment, partial unemployment, or inability or unavailability to work at the time of the initial PUA claim for the state to assess his or her eligibility. The individual must then certify on the continued claim each week that one of the enumerated reasons continues to apply. The individual continues to qualify, even if the precise provision under which he or she initially qualified changes to another precise provision under section 2102(a)(3)(A)(ii)(I) of the CARES Act. This does not require a separate initial claim.¹²

In this case, Ms. Petranovich may not legitimately self-certify after April 24, 2020 that the March 27, 2020 COVID-19 Health Mandate still required *her* to stay at home, thus preventing her from returning to work. Thereafter, Ms. Petranovich must establish another basis for her claimed benefits. Again, the U.S. Department of Labor's guidance is clear:

50. Question: If the jurisdiction's stay-at-home order due to the COVID-19 emergency is lifted and an employer has called his or her employees back to

¹⁰ R. Ex. 1, pg. 14 (emphasis added).

¹¹ See, Unemployment Ins. Program Letter No. 16-20, Change 1, Attachment 1, pg. I-11, issued by the U.S. Dept of Labor April 27, 2020.

¹² Unemployment Ins. Program Letter No. 16-20, Change 1, Attachment 1, pg.I-12.

work, is an individual who refuses to return to work due to a general fear of exposure to the coronavirus still eligible for PUA?

Answer: To qualify for PUA, the individual must be unemployed, partially unemployed, or unable or unavailable for work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I). An individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-19 related criteria for PUA, is not eligible for PUA because general concerns about exposure to COVID-19 is not one of the reasons listed in section 2102(a)(3)(A)(ii)(I).¹³

In this case, Judge Kennedy accepted at face value Ms. Petranovich's assertion that the March 27, 2020 order triggered the cessation of Ms. Petranovich's part-time employment by Mr. and Mrs. Stovall. The question is whether Ms. Petranovich established another listed reason for her unemployment after the order was lifted.

B. Ms. Petranovich was unable to substantiate that her unemployment continued to be a direct result of COVID-19.

Judge Kennedy accepted Ms. Petranovich's representation that Mrs. Stovall was elderly and had a progressive condition, although no specific age or condition was established in the record or in Ms. Petranovich's testimony. He accepted Ms. Petranovich's explanation that she, Mrs. Stovall, and Mr. Stovall agreed that Mrs. Stovall was at higher risk if she contracted COVID-19. At the time, the State of Alaska recognized that "people aged greater than 60 years are at increased risk for severe COVID-19 illness."¹⁴ However, no evidence was presented that Mrs. Stovall was advised by a health care provider to self-isolate or self-quarantine.¹⁵ Such evidence would establish that Ms. Petranovich was unable to work with Mrs. Stovall because of a medical directive to the subject of her employment. Instead, at best Ms. Petranovich's claim may be interpreted as one that her job ended, or at least was suspended indefinitely, because of COVID-19.

However, to establish such a claim, Ms. Petranovich must certify that she was unable to go to work, her place of employment closed, or she was laid off, as a "direct result of the COVID-19 public health emergency."¹⁶ As Ms. Petranovich testified, there were four reasons

¹³ Unemployment Ins. Program Letter No. 16-20, Change 1, Attachment 1, pg. I-13.

¹⁴ COVID-19 Health Alert 008, Mar. 17, 2020, Dr. Anne Zink, Chief Medical Officer, State of Alaska & Comm'r Adam Crum, Alaska Dep't of Health and Soc. Serv.

¹⁵ 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(ff).

¹⁶ 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(gg), (jj), or (kk); Unemployment Ins. Program Letter No. 16-20, Change 5, pg. 8, U.S. Dep't of Labor issued Feb. 25, 2021.

that she was no longer employed by the Stovall family: (1) Mr. Stovall's business had slowed down and the family no longer had enough money to pay her; (2) Mr. Stovall was home; (3) "the whole COVID thing hadn't lifted"; and (4) they didn't want to "injure" her unemployment claim.

Ms. Petranovich clearly stated that the *primary* reason she was not working for the Stovall family was financial, that the family didn't have the money to pay her, which she attributed to the impact of COVID-19 on Mr. Stovall's business. However, as Judge Kennedy observed, the inability to return to work (in this case after the March 27, 2020 order was lifted) because some businesses have closed or may not be hiring due to COVID-19 is not a COVID-19 related reason. Ms. Petranovich was not an employee of Mr. Stovall's drywall business; so, to the extent that the financial stress on that business resulted in loss of her personal care job in his household, her loss is indirectly related to COVID-19's temporary impact on the construction economy but it is not "a direct result of the COVID-19 public health emergency."

Although Ms. Petranovich stated that she had previously worked for the family when Mr. Stovall was working locally, it appears that Mr. Stovall's presence *in the home* was not the same as working locally. Mr. Stovall's continual presence in the home was a reason Ms. Petranovich gave for not working in his home. Finally, the desire not to "injure" Ms. Petranovich's unemployment claim is not a listed reason, indeed, a refusal to return to work for such a reason would render Ms. Petranovich ineligible for PUA benefits.¹⁷

This leaves Ms. Petranovich's third reason (which she combined with Mr. Stovall being home). The "stay-at-home" order *had* lifted, although the pandemic did result in school closures, business operation limits, restaurant closures, travel requirements, and health and congregate institution impacts – but none of these directly impacted Ms. Petranovich's ability to go to the Stovall home and provide services to them. Ms. Petranovich presented evidence (in the form of the statement purportedly signed by Mrs. Stovall more than a year after the event that she "would still have Sherry Petranovich working for me from July 11th 2020 till the current time." Critically, that statement does not say that the *reason* Ms. Petranovich was not working for the Stovall family is because of the COVID-19 public health emergency, it is simply a statement that Mrs. Stovall would continue to employ Ms. Petranovich because she was a good worker. Given

¹⁷ Unemployment Ins. Program Letter No. 16-20, Change 1, Attachment 1, pg. I-12.

that the drop in Mr. Stovall's income was a primary reason Ms. Petranovich was no longer employed by the Stovall family, the absence of his signature is significant.

From his statements in the hearing, it is clear that Judge Kennedy, as the Appeal Tribunal, sought to find the point at which a concern for exposing an elder to COVID-19 was outweighed by the inability to pay for services, even when services could be provided safely. Judge Kennedy estimated that point was reached the week ending July 4, 2020, at which point Bingo Halls, Gyms, Salons, Daycares, and Restaurants had been allowed to operate for two months,¹⁸ and personal protective equipment was more widely available. At that point, in the absence of particularized evidence from a health care provider¹⁹ that Mrs. Stovall could not receive part-time help of the kind provided by Ms. Petranovich, the presence of COVID-19 in the community alone was not sufficient a factor to say that it directly resulted in Ms. Petranovich's continued unemployment. While the Tribunal could have chosen an earlier date, it is sufficient that on this record Ms. Petranovich failed to establish eligibility for PUA benefits from July 4, 2020.

CONCLUSION

Ms. Petranovich may be sincere in her belief that she once she established her employment was interrupted because of the COVID-19 public health emergency, she did not need to be able to show she continued to be unemployed *because* of the COVID-19 public health emergency every week. The law, however, requires self-certification of eligibility under a listed reason on a weekly basis. Ms. Petranovich may also be sincere in her belief that "the COVID thing hasn't lifted" and that a possibility that she might infect Mrs. Stovall with COVID-19 was enough to render her eligible for PUA benefits. However, her belief is simply not enough to support legitimate self-certification of eligibility. Her employer was unwilling to state that the reason she continued to not be employed was the direct result of the COVID-19 public health emergency, and Ms. Petranovich admitted that the primary reason for not resuming her work was financial – not health. No health care provider advice to self-quarantine was presented. In the circumstances, the Tribunal's order represented a point at which eligibility could not be presumed to continue, and Ms. Petranovich lacked evidence to support continued eligibility.

¹⁸ State of Alaska COVID-19 Health Mandate 016 Phase II, May 8, 2020.

¹⁹ For example, a statement of a diagnosis of a condition identified by the CDC as being of high risk of severe COVID-19, such as an immunocompromising condition.

DECISION

The Appeal Tribunal decision of June 11, 2021 is AFFIRMED.

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 March 8, 2022:

[REDACTED]
Kris Knudsen
Administrative Law Judge

Adopted March 14, 2022:

[REDACTED]
Dr. Tamika L. Ledbetter
Commissioner

CERTIFICATE OF SERVICE. I certify that on March 14, 2022 the foregoing decision was served by mail and email on Sherry Petranovich. A copy has been emailed to the UI Technical Team, UI Support Team, and appeals@alaska.gov.

[REDACTED]
Office of Administrative Hearings