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**APPEAL TRIBUNAL DECISION**

**Docket Number:** P20 216 **Hearing Date:** November 17, 2020

**CLAIMANT:**

CAMILLE RIVERA JIMINEZ

**CLAIMANT APPEARANCES: DETS APPEARANCES:**

Caille Rivera Jiminez Richard Doogan

#### CASE HISTORY

The claimant timely appealed a July 9, 2020 determination which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The issue before the Appeal Tribunal is whether the claimant meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

The claimant established a claim for Pandemic Unemployment Assistance benefits effective March 15, 2020. The Division determined that the claimant was not eligible for regular unemployment benefits because she did not have wages in covered employment on which to base a claim.

On March 16, 2020 the Anchorage School District was closed to in-person attendance because of the COVID-19 pandemic and the claimant’s two young children attended school online from home. The children attended school online until May 21, 2020. The Tribunal takes official notice of the school district’s public calendar at https://education.alaska.gov/DOE\_Rolodex/

SchoolCalendar/Home/SchoolCalendar/5173.

The claimant was self-employed with a nail salon in her home. The claimant’s business was not ordered to close by any government mandates, but she was required to purchase personal protective items such as disposable aprons, masks and additional disinfectants in order to continue to operate in an emergency order issued March 19, 2020. The Tribunal takes official notice of the municipality’s website at: www.muni.org/Departments/Mayor/

PressReleases/Documents/EO-02. The claimant decided not to purchase the required supplies because it was not feasible for her small business because her children were home all day at that time, and the claimant did not want to have clients in her home with her children because of the risk of spreading the COVID-19 virus.

The claimant relocated to Pennsylvania on July 9, 2020. She is working on getting her a license to work as a beautician in Pennsylvania.

**STATUTORY PROVISIONS**

**AS 23.20.080 Federal-state cooperation**

(a) In the administration of this chapter, the department shall cooperate, to the extent consistent with this chapter, with the Secretary of Labor, and shall take action through the adoption of regulations, administration methods, and standards that is necessary to obtain for this state and its citizens all advantages available under 26 U.S.C. 3303 and 3304 (Internal Revenue Code) and the Wagner-Peyser Act, as amended. The department shall comply with the regulations of the Secretary of Labor relating to the receipt or expenditure by this state of money granted under these federal laws and shall make reports in the form and containing the information which the Secretary of Labor requires. The department shall comply with the provisions which the Secretary of Labor may from time to time find necessary to assure the correctness and verification of the reports. The department may cooperate with every agency of the United States charged with the administration of an unemployment insurance 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).

**UIPL 16-20, Change 2 Issued by USDOL 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.

 **CONCLUSION**

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 State of Federal program and who is unemployed because one of a list of reasons related to the COVID-19 pandemic. The claimant in this case has not recently worked in covered employment that would qualify her for a claim for regular unemployment benefits.

The claimant was affected by the COVID-19 pandemic when her children were unable to attend school, which prevented her from conducting her business in her home.

The CARES Act holds that a claimant may be a covered individual if a child for which the claimant has primary caregiving responsibility is unable to attend school and the claimant is unable to work as a result. The claimant’s children were at home which prevented the claimant from operating her business in her home.

The Tribunal concludes the claimant meets the definition of the CARES Act from March 15, 2020 through May 23, 2020.

**DECISION**

The determination issued on July 9, 2020 is **REVERSED**. The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program for weeks ending March 21, 2020 through May 23, 2020.

####  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.

Dated and mailed on November 30, 2020.

 Rhonda Buness, Appeals Officer