

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

In the Matter of	)	
	)	
BRENDA VINCENT	)	OAH No. 21-0319-PUA
_____	)	Agency No. P20 532

**APPEAL DECISION**

**Docket Number:** P20 532

**Hearing Date:** April 21, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Brenda Vincent  
Aaron E. Combs, Jr. (witness)

None

**CASE HISTORY**

The claimant, Brenda Vincent, timely appealed a September 30, 2020 determination which 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 recorded hearing took place on April 21, 2021. The Division of Employment and Training Services (DETS) provided written materials but was not a live participant. Ms. Vincent testified under oath, as did her uncle Aaron E. Combs, Jr.

The issue before the ALJ is whether the claimant is a covered individual as defined by the Act.

**FINDINGS OF FACT**

Ms. Vincent established a claim for PUA benefits effective the week ending March 7, 2020. She was not eligible for regular unemployment benefits because she did not have wages in covered employment on which to base a claim. On September 30, 2020, DETS determined that she was not eligible for pandemic unemployment assistance because she was not impacted by COVID-19 in a manner that made her a covered individual.

From 2010 to early 2020, the claimant was a homemaker and unattached to the paid labor force. She experiences a relapsing-remitting type of multiple sclerosis, which

impacts her ability to work a full-time job. She receives monthly Supplemental Security Income (SSI) benefits because of her disability. She understands her SSI benefits may be reduced or eliminated if she has earned income.

In March and June 2020, the claimant provided personal care services for her uncle. Those services were not impacted by the COVID-19 pandemic. While together, the claimant and her uncle agreed on a business plan in which the claimant would rehabilitate a commercial-size greenhouse her uncle owned that had fallen into disrepair. Ms. Vincent planned to grow and sell vegetables, flowers, and herbs from the greenhouse. She hoped to sell from March through September.

With financial help from Mr. Combs, the claimant cleaned the greenhouse, put in shelving, had electrical repairs done, and had a heater and water line installed. By late March 2020 she was growing vegetables and had some produce ready to sell. She did not advertise the business except through word of mouth. The claimant and her uncle are confident that many people in the community knew Ms. Vincent was selling vegetables from the greenhouse.

Ms. Vincent closed the business in mid-June because she had few or no customers. She did not earn any income in 2020. She attributed the lack of business activity to the pandemic and people's unwillingness to be near others. She plans to try the business again in 2021.

### **RELEVANT STATUTORY PROVISIONS**

#### **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); ....

## **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 State or Federal program and who is unemployed because of one or more listed reasons related to the COVID-19 pandemic. There is no dispute that the claimant is not eligible for regular unemployment compensation benefits.

The claimant asserts she was affected by the pandemic because her new business had no customers as a direct result of the COVID-19 pandemic and had to close.

This claim cannot be sustained. Though there may be some relationship between COVID-19 and Ms. Vincent's inability to build a steady clientele for her vegetables, a new business's difficulty attracting customers is not a basis for eligibility under the Act.

In addition, many other factors could explain the new business's difficulty getting started. Matters like advertising, limited or varying hours of operation, quality or quantity of selection, or other issues also may have played roles in the business's difficulties. There is insufficient evidence to conclude that buyers were unwilling to shop at the greenhouse because of the pandemic. While people were cautious about being around others, food shopping was still a necessity. The claimant's small business would seem capable of maintaining hygiene and distancing rules, such as by limiting the number of people in the greenhouse at one time.

The claimant's situation does not fit any of the identified reasons in the CARES Act for PUA eligibility. The claimant does not meet the definition of a covered individual.

### **DECISION**

The determination dated September 30, 2020 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program.

Dated: April 23, 2021

*Signed*

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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 April 23, 2021 the foregoing decision was served on Brenda Vincent (by mail and email). A courtesy copy was emailed to the UI Appeals Office for recordkeeping.

*Signed*

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Office of Administrative Hearings