

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

In the Matter of)
)
COSTA ALTON) OAH No. 21-0632-PUA
) Agency No. P21 547
_____)

APPEAL DECISION

Docket Number: P21 547

Hearing Date: April 28, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Costa Alton

None

CASE HISTORY

The claimant, Costa Alton, timely appealed a November 25, 2020 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Division of Employment & Training Services found that he was not eligible for the PUA program because he was not impacted by COVID-19 in a manner that made him a “covered individual” as defined by section 2102 of the Act.

The Department of Labor referred the appeal to the Office of Administrative Hearings (OAH) on April 7, 2021. Under the terms of referral, the administrative law judge (ALJ) hears and decides the appeal according to procedures specific to PUA appeals. OAH procedures under AS 44.64.060 do not apply.

The matter was heard in a recorded hearing on April 28, 2021. Mr. Alton appeared telephonically and testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided only written materials for the hearing and was not a live participant.

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

FINDINGS OF FACT

Mr. Alton established a claim for Pandemic Unemployment Assistance benefits effective the week ending February 29, 2020. He was not eligible for regular or other unemployment benefits, because he did not have sufficient wages in covered employment on which to base a claim.

Prior to and during the period relevant to his PUA claim, the claimant worked as a personal care provider for his elderly, ill mother, pursuant to a written “care agreement” executed by the claimant and his mother in September 2019. Under the terms of that agreement, the claimant was paid \$1650 per month to provide

assistance with her day to day living activities, including cooking, cleaning, shopping, toileting, bathing, etc. He testified at the hearing that he and his mother moved to Oregon in November 2019 in order for her to receive specialized medical care there. Then when the COVID-19 pandemic began in early 2020, they stayed in Oregon due to pandemic-related travel restrictions and because his mother’s medical condition made her especially vulnerable. Ultimately the claimant returned to Alaska in November 2020, after he was able to arrange for alternate personal care assistance for his mother.

The premise of claimant’s PUA eligibility claim is as follows. His mother has a fixed income, a significant portion of which comes from monthly payments on a mortgage note that she holds regarding her sale of an apartment building in Alaska. When the impact of the pandemic started to become apparent in February 2020, the claimant and his mother became concerned that the debtor on the note might not be able to make his monthly payments if his tenants suffered economic setbacks and were unable to pay their rent. The claimant and his mother agreed that in light of this risk, she would not pay him for personal care services. He continued to live with her and take care of her; she did pay for his room and board but not his salary. The claimant confirmed in his testimony that ultimately, the debtor on the note never missed a payment to his mother during the relevant period.

The claimant applied for PUA benefits, but the Division determined that he was not eligible for PUA benefits because he was not impacted by COVID-19 in a manner that made him a “covered individual” under the program. The Division’s more detailed explanation of this determination was that the claimant was “impacted by COVID-19 ... after not being paid for your work because your client was late getting payments from their sold property, however you were not residing in AK at the time of [the] impact” from COVID-19. (Exhibit 1, p. 4.)

When the Division provided notice of this determination, the claimant was reportedly told he would have to repay about \$14,000 in PUA benefits. It is not clear whether he was given a formal written notice to repay—then or at a later time—or whether he has ever been informed of the opportunity to seek a waiver of the repayment obligation, or of the opportunity for a hearing regarding the repayment amount.

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

(ll) 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);

(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 July 21, 2020, by the U.S. Department of Labor:

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 (PUA) 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 reasons related to the COVID-19 pandemic. It appears undisputed that the claimant’s work history did not qualify him for a claim for regular or other unemployment benefits.

The Division’s rationale for finding the claimant ineligible for PUA benefits is based on the undisputed fact that he was residing in Oregon at the time that he claimed impact on his employment from the COVID-19 pandemic. It appears that, as a general matter, claimants who claim PUA eligibility are required to apply for the program in the state where they actually suffered an impact from the pandemic. (*See In re*


Eshetu, no. P20-391 (impact of COVID-19 in Louisiana must be addressed in that state rather than in Alaska)).

This decision need not decide the issue of interstate PUA eligibility, however, because there was no impact of COVID-19 on the claimant in this case. His mother's debtor never missed a payment on the note, and therefore the mother's income was never reduced or delayed due to any pandemic-related issues. The claimant's agreement to forego his salary to accommodate the possibility of such an impact was admirable, in that it may have allayed his mother's worries about the pandemic. However, the fact that the risk never came to fruition meant that the claimant's loss of income was voluntary, rather than due to the COVID-19 pandemic. Consequently, the claimant was correctly determined to be ineligible for PUA benefits.

DECISION

The determination issued on November 25, 2020 is **AFFIRMED**.

Dated: May 3, 2021



Andrew M. Lebo
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 May 3, 2021 the foregoing decision was served on Costa Alton (by email & U.S. mail); a courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeal Team.


Office of Administrative Hearings