

She provided PCA services to Joseph and Ilene Rayfield for \$1500.00 per month. Mrs. Rayfield had kidney failure and Mr. Rayfield had heart failure. She worked about 40 hours per week providing care to this couple, frequently responding to calls in the middle of the night. Her work lasted until both entered the hospital in September 2020. Mrs. Rayfield passed away within a week; Mr. Rayfield was transferred to Maple Springs Assisted Living and passed away within a month. Ms. Powell has not been able to learn Mr. Rayfield's cause of death.

Since the death of her clients, Ms. Powell has been unable to find other clients in the Willow area, a circumstance she attributes to elderly people being unwilling to allow others in their home due to the risk of COVID-19. Ms. Powell provided the names of two individuals she had spoken to in 2020, and another, Nancy Bourne, who told Ms. Powell that she is deferring hiring a PCA until she is vaccinated. Willow, Ms. Powell testified, is far enough away from Wasilla that those older folks who need her services do not find getting a vaccine convenient. Now that nurses are traveling to people's houses in Willow to vaccinate them, Ms. Powell hopes that she will be able to find work as an independent PCA again.

However, a new barrier to resuming work as a PCA recently arose. Ms. Powell caught COVID-19 from her partner (who, she explained, caught it at work). She was diagnosed as positive for COVID-19 on April 27, 2021. She continues to suffer recurring fever, headache, congestion and loss of smell and taste, although other symptoms have abated. While the 10-day period for isolation recommended by the U.S. Center for Disease Control has passed, patients must have 24-hours without fever as well as improving symptoms to be released from isolation.¹

EXCERPTS OF RELEVANT LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

(a) DEFINITIONS.—In this section:

...

(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

¹ [cdc.gov/coronavirus/2019-ncov/if-you-are-sick/isolation.html](https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/isolation.html)

- (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;
 - ...
 - (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;
 - ...
 - (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);

Unemployment Insurance Program Letter No. 16-20, change 1, issued by the Secretary of Labor on April 27, 2020, added eligibility provisions under Section 2102(a)(3)(A)(ii)(I)(kk): An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of the COVID-19 reasons listed above, including an independent contractor who experiences a “significant diminution of work” as a result of COVID-19.

APPLICATION

Ms. Powell had a stable connection to the Alaska workforce as an independent contractor, providing PCA service to elderly clients in the Willow, Alaska area. I find she was frank about her circumstances, but unsophisticated about their tax and regulatory implications. Unfortunately, her work ended with the hospitalization and death of her clients and thus was not directly caused by COVID-19 or the COVID-19 public health emergency. I conclude that she does not qualify for PUA benefits under Section 2102(a)(3)(A)(I)(jj).

Ms. Powell described only three persons with whom she had attempted to find work as a PCA in Willow. Given the size of the Willow community, she has suffered a

significant diminution in work. However, the question is whether that diminution is caused by COVID-19. She believed people were reluctant to hire her because they were afraid that she would bring COVID-19 into their home. In short, Ms. Powell relies on her account of a general sense of fear among the elderly in the community of Willow to support her claim that her inability to find replacement clients is due to COVID-19.

After October 3, 2020, there was no longer a state public health mandate or public health emergency order that would limit the operation of her business. Ms. Powell could not supply more specifics of clientele response than the first names of two possible clients and the full name of another who wouldn't hire her due to fear of contracting COVID-19. She was unable to provide specifics of conversations, text exchanges, or email correspondence that would corroborate her claim. Such details can bolster testimony of link between the loss of clientele and COVID-19. She did not provide a statement from a prospective client, stating she would have been hired but for the potential exposure to COVID-19. In cases where an emergency order or health mandate restricts or limits the operation of the independent contractor's business, or a credible claimant provides details of events or conversations, such client or potential client corroboration is unnecessary. But, because general concerns about exposure to COVID-19 alone is not one of the reasons listed in Section 2102 (a)(3)(A)(ii)(I),² I find something more than her vague report was needed to show that the lack of demand for Ms. Powell's services was caused by COVID-19. I conclude that Ms. Powell has not shown she is eligible for PUA benefits under Section 2102(a)(3)(A)(ii)(I)(gg).

Ms. Powell was diagnosed as COVID-19 positive on April 27, 2021. Before that, she was in quarantine because her partner had contracted COVID-19 at work. Ms. Powell was not "able and available" for work while in quarantine because a member of her household had COVID-19, nor while she herself was in isolation due to COVID-19 infection. Because she was diagnosed with COVID-19, and, at least as of the date of the hearing still required to isolate, she is eligible for PUA benefits from the week ending May 1, 2021 through the week ending May 22, 2020, under Section 2102(a)(3)(A)(kk)(I)(aa).

The precise dates of her partner's infection, which preceded hers, were not available. Therefore, this issue is remanded to the DETS so that Ms. Powell can supply a copy of her partner's test result and information on symptom onset and her dates of first and last exposure to him, so that a proper calculation of her quarantine period can be made and eligibility determined under Section 2102(a)(3)(A)(ii)(I)(bb).

DECISION

The determination of January 14, 2021 (Letter ID: L0009134692) is **AFFIRMED IN PART** and **REVERSED IN PART**. The claimant is eligible for Pandemic Unemployment Assistance from the week ending May 1, 2021 through the week ending May 22, 2021.

² See, Unemployment Insurance Program Letter No. 16-20, change 1, attachment 1, p. I-13.

The case is REMANDED for further fact-finding and determination of eligibility under Section 2102(a)(3)(A)(ii)(I)(bb) of the CARES Act.

Dated: May 24, 2021.




Kristin Knudsen
Administrative Law Judge

APPEAL PROCEDURE

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 24, 2021 the foregoing decision was served on Kyra Powell (by mail). A courtesy copy was emailed to the UI Support Team and the UI Appeals Office.

_____
Office of Administrative Hearings