

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

In the Matter of)
)
VICKI SPRY) OAH No. 21-1227-PUA
) Agency No. P21 496
_____)

APPEAL DECISION

Docket Number: P21 496 **Hearing Date:** July 28, 2021

CLAIMANT APPEARANCES: Vicki Spry **DETS APPEARANCES:** None

CASE HISTORY

The claimant in this case, Vicki Spry, appealed a January 19, 2021 determination which denied her Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0009169606, issued January 19, 2021.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings in June 2021. Under the agreed 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 matter was heard in a recorded hearing on July 28, 2021. Ms. Spry 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 ON ELIGIBILITY

Ms. Spry established a claim for Pandemic Unemployment Assistance benefits that was effective beginning the week ending March 14, 2020. The Division ultimately found that she was not impacted by COVID-19 in a manner that made her a covered individual under the program, believing that her position with the Anchorage School District did not extend to the summer months (May 30, 2020 to August 14, 2020).

Ms. Spry resides in Anchorage, Alaska. Ms. Spry works as a noon duty person at Northwood Elementary School. She was hired October 23, 2019 by the Anchorage School District for the noon duty position.

As a result of the COVID-19 health mandates, the Anchorage School District closed March 16, 2020 and went to out of school instruction on April 13 after spring break. Ms. Spry began to receive PUA benefits for the week ending March 14, 2020.

Ms. Spry's position at Northwood Elementary School did not extend into the summer months but she planned to continue in a similar position during summer school. Unfortunately, summer school was not in-person needing noon duty workers.

Ms. Spry is the primary caregiver for her twelve-year old grandson. She had to stay home with him during the summer because of a lack of day care or summer school programs. On August 20, 2020, Ms. Spry was on call for lunch duty but teachers were doing noon duty because of COVID-19 distancing requirements so she did not get called in for duty.

She became eligible for regular Unemployment on October 2, 2020 in weekly amount of \$58.¹ After the January 19, 2021 determination, Ms. Spry received a notice of overpayment of PUA benefits. The notice is not in the record, and it is not clear whether she was informed of the opportunity to seek a waiver, or other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b. It is also possible that if a waiver were not granted, she must be afforded an appeal hearing in which such matters as estoppel and hardship could be explored. The present referral does not encompass those issues, and the present decision does not decide them for or against Ms. Spry.

DETS then began to recoup the PUA overpayments from her UI benefits. Ms. Spry quit filing for UI benefits in July 2021 because she believed her eligibility for the program had expired. She testified that she did not believe the overpayments had all been recouped through her UI benefits. The Division has advised that its Benefit Payment Control (BPC) office handles waiver requests for overpayments and recoupments. For questions and information regarding options that may be available, Ms. Spry can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov.

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

¹ Exhibit 1 at 5.

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 5 Issued by USDOL February 25, 2021

ii. Certain individuals providing services to educational institutions or educational service agencies. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.”*

This new COVID-19 related reason addresses situations where an individual provides services to educational institutions or educational service agencies and is subject to significant volatility in the school schedule directly related to COVID- 7

19. Whether the individual is “between or within terms” and has a “contract” or “reasonable assurance” to return in the subsequent year or term will affect the individual’s ability to self-certify under this COVID-19 related reason, as described below.² Attachment II provides a graphical representation of the process for determining PUA eligibility.

² UIPL No. 10-20, Change 1, provides additional information about the “between and within terms” denial provision within the context of COVID-19. UIPL No. 05-17 clarifies the Department’s interpretation of the terms “contract” and “reasonable assurance” and assists states in applying these terms consistent with federal law requirements.

A. *Individual does not have a contract or reasonable assurance.* An individual who: (1) has provided services to an educational institution or educational service agency; (2) lacks a contract or reasonable assurance and, as a result, is not subject to the “between and within terms” denial provisions; and (3) is not otherwise eligible for

regular UC (or PEUC or EB) may self-certify eligibility for PUA under this new COVID-19 related reason if they are subject to significant volatility in the school schedule.

If the individual does not have a contract or reasonable assurance to return **and** self-certifies eligibility under this new COVID-19 related reason (or another COVID-19 related reason that is applicable to their situation), the individual may use wages from the educational institution to potentially qualify for a WBA that is higher than the state's minimum PUA WBA.

B. Individual has a contract or reasonable assurance. An individual is generally not eligible for PUA if they: (1) have provided services to an educational institution or educational service agency; and (2) are filing for a week that is between or within terms and they have a contract or reasonable assurance to return in the subsequent year or term, and, as a result, they are denied regular UC (or PEUC or EB). However, the individual may be eligible for PUA if they have other non-educational employment from which they are able to self-certify that they are unemployed, partially unemployed, or unable or unavailable to work for a different COVID-19 related reason. As described in Section 4.e.i. of UIPL No. 10-20, Change 1, wages from the educational institution may not be used to calculate the individual's PUA WBA.

If school schedules or planned school openings are disrupted and an individual is found to no longer have a contract or reasonable assurance to return in the subsequent year or term, then they can establish eligibility going forward as described in subparagraph (A) under this new COVID-19 related reason or another COVID-19 related reason that is applicable to their situation.

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 other State or Federal program and who is unemployed or unable to work because of one or more listed reasons related to the COVID-19 pandemic.

Ms. Spry did not have sufficient earnings for eligibility for regular unemployment until October 4, 2020. Consequently, she meets the first prong of the eligibility test for PUA benefits.

The tribunal finds that Ms. Spry was a covered individual beginning the week ending May 30, 2020 when the Anchorage School District school year would have traditionally begun summer school. There was a reasonable assurance given her regular year noon duty position that she would have been able to secure noon duty at Northwood Elementary School or another school in the district with a summer school program. UIPL 16-20, Change 5 Issued by USDOL February 25, 2021, recognizes such

reasonable assurance as the basis for PUA benefits. Because of the COVID-19 pandemic, the Anchorage School District did not hold in-person summer school. Consequently, Ms. Spry is a covered individual for the period summer school was traditionally held because her workplace was closed by the COVID-19 pandemic.

Another COVID-19 related cause also prevented Ms. Spry from working in the summer of 2020 because she had to provide care for her grandson who lived with her and for whom she was the primary caregiver. Her grandson could not go to summer school because of the ASD in-person school closures and childcare was not available due to the pandemic. Consequently, Ms. Spry also qualifies for this period as a covered individual under section 2102(3)(A)(dd) of the Act.

Lastly, Ms. Spry's regular school-year noon-duty position did not materialize on August 20, 2020. Ms. Spry was on call for lunch duty but teachers were doing noon duty because of COVID-19 distancing requirements so she did not get called in for duty. Consequently, she suffered volatility of work schedule recognized as grounds for eligibility by UIPL 16-20, Change 5 Issued by USDOL on February 25, 2021. Ms. Spry is therefore an eligible individual for PUA benefits until October 4, 2020 at which time she became eligible for regular unemployment.

DECISION

The determination issued on January 19, 2021 (Letter ID L0009169606) is **REVERSED**.

The claimant is eligible for benefits from the Pandemic Unemployment Assistance (PUA) program from the week ending May 30, 2020 through the week ending October 3, 2020.

The case is **REMANDED** to DETS to recalculate any remaining overpayment due and to provide the claimant an opportunity to seek a waiver, the opportunity for a new hearing, or other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.

Dated: August 2, 2021



Breck C. Tostevin
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 August 2, 2021 the foregoing decision was served on Vicki Spry (by mail and email [REDACTED]). A copy was emailed to the DETS UI Technical Team, UI Appeals Team & UI Support Team.

[REDACTED]
Office of Administrative Hearings