

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

In the Matter of	)	
	)	
TINA AVONDA	)	OAH No. 21-1315-PUA
_____	)	Agency No. P21 535

**APPEAL DECISION**

**Docket Number:** P21 535

**Hearing Date:** August 24, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Tina Avonda

None

**CASE HISTORY**

Ms. Avonda appealed two February 17, 2021 determinations denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. These decisions were recorded in Letter ID L0009926155 and Letter ID L0009958923. Between these two determinations they denied her eligibility from the week ending February 8, 2020 to the week ending November 14, 2020 and from the week ending December 5, 2020 onward.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on July 1, 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 matter was heard in a recorded hearing on August 24, 2021. Ms. Avonda testified telephonically under oath. Prior to the hearing she provided documents<sup>1</sup> that have been identified as Exhibit A and they were admitted into evidence at the hearing. At the hearing she provided Exhibit B which was admitted into evidence at the hearing. On August 24, an order was issued holding the record open until September 7 to allow Ms. Avonda to supplement the record. All post hearing documents are identified as Exhibit C and are hereby admitted into evidence.

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 documents

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<sup>1</sup> Exhibit A contains tax documents and Covid-19 test results.

provided by the Division are identified as Exhibit 1 and were admitted into evidence at the hearing.

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

### **FINDINGS OF FACT**

#### *A. Eligibility between March 1, 2020 and September 26, 2020.*

In March 2019 Ms. Avonda renewed her massage therapist's license and began to build a private practice. She operated her business out of her house. The business was called Tina Avonda Therapeutic Touch. Her 2019 1040 and Schedule C forms show that her net business income was \$1,910 and her gross income was \$13,474. In January 2020 and February, Ms. Avonda continued to run her business. However, her office/home lease ended on February 29, 2020. In expectation of having no home or workspace she planned a trip to Texas, to explore moving there to live and work. She was going to Texas to meet with the Upper Valley Medical Clinic in Canutillo, Texas (Clinic) where she was pursuing a possible partnership arrangement with the Clinic.<sup>2</sup>

In February 2020 she bought round trip airline tickets to Texas. She left on March 3 and was set to return to Anchorage in mid-March 2020.<sup>3</sup> In anticipation of returning she had booked a reservation at an extended stay hotel in Anchorage. She planned to live there, with her children, until she got work and housing.

Prior to her trip to Texas, Ms. Avonda was working to establish two separate work situations upon her return to Alaska. Since she did not have an office, she hoped to establish a practice of doing in-home, massage. She had one potential client in place. The other opportunity was related to a grant proposal that would set up a pilot program of free, therapeutic massage for patients in the Providence hospital breast and OBGYN cancer unit. Ms. Avonda was not an organizer or contractor of the grant. Her connection was that she was one of the identified therapists who would provide therapeutic services if the grant was approved. Her role was that she had agreed to work the program if the organizations got the grant. At the time Ms. Avonda flew to Texas there was no set start date for that project. Ms. Avonda was never offered a position on the treatment team.

Ms. Avonda did not return to Alaska in March 2020. She did not return to Alaska until September 26, 2020. Ms. Avonda cancelled her return ticket before air travel

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<sup>2</sup> Exhibit 1; Page 10.

<sup>3</sup> In Exhibit 1: Page 11 she reported her return date was March 18; testifying she reported it alternatively as March 19, and mid-May. She did not provide written proof of the planned return date. Ms. Avonda informed the Division that March 17, 2020 was the date her self-employment was first impacted by Covid-19.

was officially limited due to Covid-19 factors. At the time she cancelled her return flight she did not have Covid-19 or any underlying medical conditions. Ms. Avonda also cancelled her hotel reservations at the extended stay hotel in Anchorage. Her decision was based on her belief that she would not have safe housing in the hotel, and she had nowhere else to live in Anchorage upon return. She decided that staying in Texas and volunteering at the Clinic was safer than flying back to Alaska. Ms. Avonda did not seek work in Texas. Her housing was in trade for her volunteer work at the Clinic. Her volunteer clinic work was in office tasks, not in massage.

In May 2020 Ms. Avonda purchased airline tickets to return to Anchorage on June 13, 2020. On June 3, 2020 Ms. Avonda tested positive with Covid 19. She quarantined at the Clinic, and did not fly to Alaska on June 13.

Ms. Avonda eventually decided to drive back to Alaska and arrived September 26, 2020.

*B. Eligibility after September 26, 2020.*

Ms. Avonda returned to Alaska on September 26, 2020. When she returned, she did not pursue working as a massage therapist. She had decided that it was professionally unethical to do massage therapy while there was a pandemic. She also did not feel completely recovered from Covid-19. In December 2020 she hurt her shoulder in a bad fall. That injury and subsequent shoulder surgery further delayed her ability to return to massage therapy as a career.

In October 2020 Ms. Avonda applied for and was accepted into the Department of Health and Social Services (DHSS) Covid-19 tracing call center. She was offered the job on November 23, 2020. The training process required the applicant to complete online training before formally beginning. Ms. Avonda began her on-line training on December 7, 2020. The timing and pace of the online training was in the trainee's control

Ms. Avonda reported that due to the shoulder injury, and ongoing medical problems, she worked less than part time each week. She was paid \$25.00 an hour for each hour that she was in training. Also, once hired, she was going to be paid hourly and DHSS did not guarantee a minimum number of hours per week. Prior to her finishing the training to be a contact tracer, DHSS shifted the focus from contract tracing to vaccine support. While waiting for that shift to occur, Ms. Avonda was still, technically, an employee. She resumed paid work for DHSS, at the vaccine call center, in April 2021. Ms. Avonda confirmed that her reduced hours for DHSS were not the direct result of Covid-19.

During this time, Ms. Avonda was in Florida from December 30, 2020- January 18, 2021. During that trip she visited with family and had one doctor's appointment with

a clinic specializing in long haul covid care. While in Florida she explored moving there to work and live.

On November 16, 2020 Ms. Avonda tested positive for Covid-19 a second time. She was not yet hired by DHSS at the time of the diagnosis.

Ms. Avonda has two elementary school aged children. They were in fourth and fifth grade in the fall of 2020. They lived with Ms. Avonda full time from October 26, 2020 until December 24, 2020. Beginning in January 2021 they lived with her during the week and with their father on weekends. The children school was in remote learning during the fall of 2020. The children were back to in-school classes in January 2021. Ms. Avonda confirms that her ability to do her online training, and her online work with the vaccine call center, was not affected by monitoring their schoolwork when they were in remote schooling.

### **EXCERPTS OF RELEVANT PROVISIONS OF 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.

(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;

(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;

(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...

### **Attachment to UIPL#16-20 Change 1:**

7. Question: If an individual is living in one state and is self-employed in another state, where should the individual file for PUA benefits?

Answer: The self-employed individual must file with the state where he or she was working at the time of becoming unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. If an individual worked in more than one state at this time, the individual may file in any of those states.

11. Question: To be eligible for PUA, is an individual required to meet a minimum monetary requirement in the base period, similar to the monetary requirements for regular UC?

Answer: No. There is no minimum monetary requirement for an individual to be eligible for PUA. However, base period wages are considered when calculating the individual's WBA.

### **Attachment I of UIPL No. 16-20, Change.2**

14. Question: If an individual becomes unemployed for reasons unrelated to COVID-19, and now is unable to find work because businesses have closed or are not hiring due to COVID-19, is he or she eligible for PUA?

Answer: No. An individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.

17. Question: Under DUA, an individual is no longer eligible for benefits when the conditions caused by the disaster no longer exist. When does an individual's eligibility for PUA end?

Answer: To be eligible for benefits, the individual must meet the requirements to be a covered individual under section 2102(a)(3)(A) of the CARES Act, including that the person must be unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 related reason in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. As discussed in Question 45 of Attachment I to UIPL No. 16-20, Change 1, eligibility is determined on a weekly basis and the individual must certify for an identified COVID-19 related reason each week to receive payment. The individual ceases to be eligible when he or she no longer meets the requirements to be a covered individual in a given week.

### **APPLICATION**

- A. *Ms. Avonda did not establish that her business's loss of income was significant, or the direct result of the Covid-19 emergency health crisis.*

For Ms. Avonda to qualify for benefits beginning March 17, 2020 she has to establish that she was a self-employed individual, with an ongoing business that provided her with an attachment to the Alaska work force. She has to establish that her ability to conduct her customary work activity was thwarted, or greatly limited, due to specific

Covid-19 related factor, and she has to prove that she experienced a significant diminution of work as a direct result of COVID-19<sup>4</sup>

The evidence shows that Ms. Avonda's business was not firmly established prior to 2020. Ms. Avonda's business started in March 2019. Her net 2019 income from the business had been only \$1,910. On March 1, 2020 Ms. Avonda's massage business had no physical location and no clients. This was because her lease had expired at the end of February and she could not provide therapeutic massage unless she had an office space or pivoted her practice to offering in-home massage. She had one family with whom she was discussing providing in-home care to their elderly father, but nothing was firmed up when she left for Texas. She also had an expectation that a grant she was associated with would get approved, and then hire her to participate in its pilot project. No evidence has been provided to establish that the grant got approved, or that she had been offered a job. Therefore, she does not satisfy the Secretary's Change 2 criterion added under subsection (kk), quoted above.

*B. (aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.*

Ms. Avonda was diagnosed with Covid-19 on June 3, 2020 when she was in Texas.<sup>5</sup> By that time she had been in Texas for 3 months. She was engaged in volunteer work at The Clinic in Texas. She was not working in Alaska or seeking employment in Alaska. To the extent that she would have been eligible for Covid-19 benefits due to the quarantines effect on her volunteer work, those benefits should have been applied for in Texas.<sup>6</sup>

On November 16, 2020 Ms. Avonda tested positive for Covid-19. She was living in Alaska at the time of that test result. However, she was not working and therefore she did not lose income as a result of the quarantine. Her two weeks of quarantine ended November 30, 2020. Ms. Avonda testified that she did not start her DHSS training until December 7, 2020. Therefore, she does not satisfy subsection (aa).

*C. (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;*

Ms. Avonda's school age children lived with her October 26 until December 24. During that time her children's school was in remote learning mode. During that some timeframe Ms. Avonda did not have work that was affected by her responsibility to monitor the children's in home schooling. Ms. Avonda did not begin the online

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<sup>4</sup>. Attachment I to UIPL No. 16-20. Sec C (1.) (k).

<sup>5</sup>. Exhibit A; Covid diagnosis from The Clinic.

<sup>6</sup>. Attachment to UIPL#16-20 Change 1: Question 7.

training until December 7, 2020. Ms. Avonda testified that her ability to do the DHSS work was not limited by her need to provide supervision to the children. Therefore, she does not satisfy section (gg) of the Cares Act.

*D. (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;*

Assuming that Ms. Avonda had an ongoing business waiting in Anchorage, her decision to stay in Texas was not because of a quarantine imposed as direct result of the Covid-19 health crisis. Texas business closures did not begin until March 24, 2020. Texas never issued limitations on air travel into or out of Texas.

In Alaska the Governor did issue restrictions on air travel into Alaska but only for travelers from high-risk countries. But, for passengers coming from other parts of the USA, there were no such limitations. Rather, those travelers were only directed to follow the normal social distancing protocols.

Ms. Avonda had flown to Texas for the express purpose of seeking possible employment there. Then, at some point before March 18 she cancelled her return ticket due to her concern that returning to Anchorage, and to her expected housing situation, would not be safe due to the growing pandemic. Neither Alaska nor Texas had health mandates that prevented her from flying back to Alaska at that time. She did not have Covid-19 and she did not have any underlying health conditions heightening her risk of death or hospitalization if she contracted Covid-19. She has not provided proof that a health care provider informed her that she was medically unable to be on a plane. Ms. Avonda voluntarily chose not to return to Alaska. Her concerns and reasons were in good faith, but they do not satisfy the requirement that her inability to be in Anchorage, working her job, was due to a quarantine imposed as a direct result of the Covid-19 health crisis.

*E. (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;*


For Ms. Avonda to qualify under this provision she needs to establish that she had a firm offer to begin work, and that the offer was later rescinded as a direct result of the Covid-19 health emergency. She has not presented evidence to support that claim. The grant work she hoped to do at Providence Hospital was not finalized by the time she left for Texas. She has not provided evidence that the pilot program got the final red light before Covid-19 closures started, or that she was actually offered a job in the pilot program. Moreover, she candidly admitted that she would not have taken the job even if offered. Thus Ms. Avonda does not satisfy the requirements of subsection (gg).



## DECISION

It is the determination of this tribunal that Ms. Avonda's situation does not fit the definition of a covered individual pursuant to The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance. The Division's determination that she is ineligible for PUA benefits is **AFFIRMED**.

Dated: November 22, 2021,

  
Karla F. Huntington  
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.

## NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT BENEFITS

This decision will affect repayment of previously approved benefits. If the division continues to seek recovery of previously paid benefits after this decision Ms. Avonda can apply for a waiver from repayment. No waiver will be granted if she does not seek it. If a waiver is sought but not granted, Ms. Avonda must be given a separate appeal hearing on that issue if she requests. The Division has advised the OAH 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. Avonda can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov). The form for requesting a waiver is here: [https://labor.alaska.gov/unemployment/documents/Overpayment Waiver Application.pdf](https://labor.alaska.gov/unemployment/documents/Overpayment%20Waiver%20Application.pdf).

## CERTIFICATE OF SERVICE

I certify that on November 22, 2021 the foregoing decision was served on Tina Avonda (by mail and email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

  
Office of Administrative Hearings