

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

In the Matter of )  
 )  
KATRINA KAPELOS ) OAH No. 21-1516-PUA  
 ) Agency No. P21 733  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 733

**Hearing Date:** September 21, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Katrina Kapelos

None

**CASE HISTORY**

The claimant, Katrina Kapelos, timely appealed an adverse determination issued by the Division of Employment and Training Services (DETS) on April 20, 2021 (Letter ID: L0012632238) which denied Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The Department of Labor referred the appeal to the Office of Administrative Hearings on August 2, 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 September 21, 2021. Ms. Kapelos was appeared telephonically and testified under oath. At her request, the record remained open to allow her to submit medical records in support of her claim for PUA benefits. The period to submit the records was twice extended, and the record was finally received October 8, 2021 and the record closed. Although notified of the hearing, the DETS elected not to appear or to make a representative available by telephone; the DETS relies on the documents it submitted in this appeal and admitted as Exhibit 1.

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

**FINDINGS OF FACT**

Katrina Kapelos established a claim for Pandemic Unemployment Assistance benefits on May 22, 2020, effective March 21, 2020. The DETS initially paid PUA benefits beginning the week ending March 21, 2020 and ending the week ending November 21, 2021. The DETS determined that Ms. Kapelos was not eligible for PUA benefits because she failed to substantiate her self-employment was impacted by COVID-19 in a manner that made her a covered individual under the program.

Ms. Kapelos's testimony was very confused and sometimes contradictory. She stated she had worked for the Alex Hotel as a housekeeping manager. She received regular

unemployment compensation at the end of this job and exhausted her benefits. She could not remember when she stopped getting unemployment, and indeed stated that she got unemployment in 2020 (the record shows she received PUA benefits). She also testified she did not work in 2019. She stated she initially applied for PUA benefits because she needed help and “the lady” said she qualified, and she received benefits. She stated she didn’t get her mail, and her phone was stolen for three weeks, so she didn’t respond to inquiries by the DETS.

She stated that she had previously worked for her mother, who operated Cinderella Cleaning Services since the 1990s. She said her mother was signing the business over to her, and she intended to restart the business around Labor Day, after her daughter was born. She testified that in preparation for this, she had set up QuickBooks, established a Facebook page, printed business cards, and created an email account for the business. Ms. Kapelos testified that she didn’t start working in the business because the pandemic “started a month before” her daughter was born and the “the President told everyone to stay home” and it was “illegal” to go out and “we couldn’t even touch each other.”

Ms. Kapelos also testified that she had worked for Springhill Suites as a housekeeper very briefly (one day) in 2020, but that she was unable to continue due to her pregnancy. She could not remember when she left the Springhill Suites. She testified that at the time she was pregnant with her daughter (born June 14, 2020), and that her ob-gyn, concerned about her severe asthma, had advised her to avoid COVID-19 and confine herself to bed rest in her last month of pregnancy.

A copy of her physician’s note was admitted into evidence, showing that she was advised to avoid contracting COVID-19 due to her severe asthma, and placed on bed rest on May 19, 2020. Thus, she did not apply for PUA benefits until after she was placed on bed rest by her physician.

### **EXCERPTS OF RELEVANT PROVISIONS OF 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

(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—

...

(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;

...

(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).

### **APPLICATION**

I find that Ms. Kapelos's testimony was not entirely credible. She made statements that were exaggerated, was vague about when events occurred, and contradicted herself. Ms. Kapelos stated she applied for PUA benefits because she needed assistance, and she qualified.

Ms. Kapelos stated that she planned to assume her mother's housekeeping business, Cinderella Cleaning Service. She testified that "covid happened" the month before her daughter was born. She testified that the President ordered everyone to stay home and that it was illegal to go out. She testified that she couldn't go into people's houses because of COVID-19. She testified that she planned to start working at the business around Labor Day, when her daughter would be three months old. She had, she testified, made preparations for the business, including establishing a QuickBooks account, setting up a Facebook page, and printing business cards. She testified she had worked with her mother when her mother was operating Cinderella Cleaning

Service. She said she transferred the name to hers previously in order to save the name.

Ms. Kapelos's mother, Jennifer Kapelos, submitted a statement dated September 20, 2021, stating that Ms. Kapelos did intend to start up her (Jennifer's) business "after her daughter A\_\_\_ was born." Ms. Kapelos also noted that

"Unfortunately the Covid-19 Pandemic hit 1 month prior to my granddaughter's birthday . . . and plans were sadly put to a screeching halt due to the Pandemic. . . . Now since the Pandemic is still in effect and more cases are still opening I feel it's best to put a hold on it a while longer."

I find that Ms. Jennifer Kapelos did not intend to transfer her business to Ms. Katrina Kapelos until sometime after June 14, 2020. I find that Ms. Katrina Kapelos did not intend to begin working at Cinderella Cleaning Service until mid-September 2020. I find that she was not impacted by COVID-19 in March 2020 by being prevented from starting her self-employment business because she had not then intended to start work at Cinderella Cleaning Services.

Ms. Kapelos testified she went to work at Springhill Suites as a housekeeper. She was not clear when it was that she did this. She testified she couldn't do the work because she was too far along in her pregnancy. She admitted that she was only able to work one day, and that she developed cramping and had to go to the Emergency Room. It does not appear that she was unable to do this work as a direct result of COVID-19.

Ms. Kapelos testified that her ob-gyn advised her not to go out and avoid COVID-19 because of her severe asthma. She was vague about when this advice was given. She finally submitted a note from Dr. Moses, dated October 7, 2020, confirming that she had been advised "to avoid the possibility of Contracting Covid-19. . . .to avoid contact with people or to go anywhere until further notice at the time. For her Severe Asthma was a concern for her unborn child." The dates given on the note were May 22, 2020 to June 14, 2020.

I find that Ms. Kapelos was indeed advised to self-quarantine by her ob-gyn from May 22, 2020 through June 14, 2020 due to concerns about COVID-19. I conclude that during this period, she was a covered individual under Section 2102(a)(3)(A)(ii)(I)(ff). I conclude that she was eligible for PUA benefits from the week ending May 16 through the week ending June 20, 2020.

I find that Ms. Jennifer Kapelos and Ms. Katrina Kapelos initially planned to restart Cinderella Cleaning Services after Labor Day, but that they agreed that Ms. Katrina Kapelos would not assume Cinderella Cleaning Services after mid-September 2020 due to the COVID-19 pandemic. Indeed, this decision corresponded with the rise in cases in Anchorage and the resulting Municipality E.O. 15 issued August 30, 2020 and subsequent modified "Hunker Down" Order (E.O. 16) issued December 1, 2020. I find that Ms. Kapelos, as someone with severe asthma, was at heightened risk within the meaning of E.O. 15, and that this inhibited the planned restart of Cinderella's

Cleaning Service. I conclude that effective the week ending September 12, 2020 she was eligible for PUA benefits under Section 2102(a)(3)(A)(ii)(I)(gg).

However, I also find that Ms. Kapelos's eligibility under Section 2102(a)(3)(A)(ii)(I)(gg) is not indefinite. I find that Ms. Kapelos was not prevented by COVID-19 from restarting the Cinderella Cleaning Service after February 1, 2021, when Municipality of Anchorage EO18 ("Easing Up") went into effect. Thereafter, Ms. Kapelos could solicit clients and, given rising vaccination rates and then falling case numbers in Anchorage, safely clean houses for selected clients. Therefore, I conclude that Ms. Kapelos would not be eligible for PUA benefits after the week ending January 30, 2021.

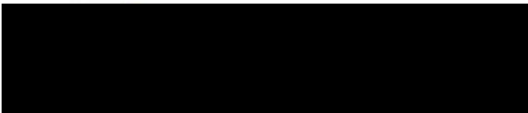
It was not clear from Ms. Kapelos's testimony if she had already sought and received a partial waiver of recoupment of overpaid benefits or not. It is possible that Ms. Kapelos will qualify for a waiver from recoupment. If a waiver is not granted, she must be given a separate appeal hearing on that issue. The present referral does not encompass these issues, and the present decision does not decide them for or against Ms. Kapelos.

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. Kapelos can call the BPC at 907-465-2863, 1-888-810-6789, or email to [inu.bpc@alaska.gov](mailto:inu.bpc@alaska.gov)

### **DECISION**

The determination of April 20, 2021 (Letter ID: L0012632238) is **MODIFIED**. Ms. Kapelos was a covered individual eligible to receive PUA benefits from the week ending May 16, 2020 through the week ending June 20, 2020, and from the week ending September 12, 2020 through the week ending January 30, 2021. For other periods, the determination is **AFFIRMED**.

Dated: October 19, 2021,

  
Kris Knudsen  
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 October 20, 2021, the foregoing decision was served on Katrina Kapelos (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

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Office of Administrative Hearings