

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

In the Matter of )  
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MEGAN HEDGECKE ) OAH No. 21-1442-PUA  
 ) Agency No. P21 789 03  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 789 03

**Hearing Dates:** August 16, 2021 and  
October 8, 2021

**CLAIMANT APPEARANCES:**

Megan Hedgecoke

**DETS APPEARANCES:**

None

**CASE HISTORY**

Ms. Hedgecoke appealed a February 26, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID: L0010052921. When denying eligibility the Division determined that Ms. Hedgecoke was not a covered individual under Section 2102 of the CARES Act of 2020. The decision details reported: "You claim you were impacted by Covid-19 on 3/25/20 when you were providing childcare for a student that was unable to attend school, however you have not responded to multiple attempts to gather more information."

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings on August 2, 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 on August 16, 2021 and October 8, 2021. Ms. Hedgecoke testified telephonically and 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 matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of Ms. Hedgecoke's appeal disqualified her from challenging the determination of ineligibility, and, if not, whether Ms. Hedgecoke meets the eligibility requirements under the act.

## FINDINGS OF FACT

### Timeliness

The Division issued its Notice of Non-Monetary Issue Determination on February 26, 2021. On March 22, 2021 the Division issued a Notice of Monetary Redetermination. Ms. Hedgecoke filed her appeal on April 8, 2021. Exhibit 1 shows that Ms. Hedgecoke contacted the Division on February 22, 2021, a few days before the February 26, 2021 determination was made. At that time, she sent in proof that her son's school was on remote learning<sup>1</sup> due to Covid-19. On March 22, 2021 a Notice of Monetary Redetermination was sent to Ms. Hedgecoke. On March 26, 2020 and on March 31, 2020 Ms. Hedgecoke called the Division<sup>2</sup> but was not able to talk to a staff member. On April 8, 2021 Ms. Hedgecoke contacted the Division again and was able to talk with staff. They explained to her that the March 22, 2021 Notice of Monetary Redetermination letter did not mean that the Division had re-established her as eligible for PUA benefits. They then helped her file this appeal.

### Merits

In 2018 and for most of 2019 Ms. Hedgecoke was not employed. She was living off the proceeds from the 2017 sale of her home. In the fall of 2019, her son started kindergarten. At that point she began to plan to go back to work.

Ms. Hedgecoke was involved in two avenues of income production in early 2020. Both endeavors involved chaga mushrooms [Hereafter, chaga]. In addition, Ms. Hedgecoke had been hired to start working for Somers & Associates as a property manager

In January 2020 Somers & Associates hired Ms. Hedgecoke to be a property manager. Her job was to start in mid-March. Ms. Hedgecoke was to be a full-time employee. However, in February 2020, Ms. Hedgecoke recognized that medical problems would prevent her from being a reliable full-time employee. She notified Somers & Associates that she would not be able to begin working for them come March.

Throughout 2020, Ms. Hedgecoke's medical condition was an ongoing and escalating factor limiting her ability to work. She was getting medical care for symptoms that, in hindsight, were caused by kidney and heart disease. On May 10, 2020 Ms. Hedgecoke's symptoms advanced to the point that she went to the emergency room for care. Thereafter, she was too ill to have worked at Artic Chaga.

However, neither herself, nor her treating physicians, realized the nature of her underlying condition for many months. It was not until December 2020 that a specialist diagnosed<sup>3</sup> kidney and heart failure. Ms. Hedgecoke provided this tribunal with a doctor's note stating that, effective June 2020, she was unable to work due to kidney failure and heart failure. Dr. David M. Lefler Jr's April 2021 notation stated

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<sup>1</sup> Exhibit 1, Page 10.

<sup>2</sup> Exhibit 1, Pages 14 and 20.

<sup>3</sup> Dr. David M. Lefler, Jr., DO, FACP, FASN. Nephrology & Hypertension Associates of Alaska, P.C.

that Ms. Hedgecoke had renal failure and heart failure. He also noted that by June 2020 she had been medically unable to work due to those severe medical conditions, and, that she was at high risk if exposed to Covid-19. Dr. Lefler reviewed Ms. Hedgecoke's medical history and laboratory records as part of his diagnosis and opinion.

Had the nature of her disease been identified earlier she would have known that she needed to isolate because of her underlying health conditions and the resulting heightened vulnerability to Covid-19. However, as 2020 unfolded, she did not know what she had, she only knew that she was initially too sick to work full time, and later, too sick to work at all.

In February 2021 Ms. Hedgecoke applied for Social Security Disability (SSDI) based on her chronic kidney and heart medical conditions. She has been accepted into the SSDI program. SSDI determined that her medical eligibility began in December 2020.

In 2020 Ms. Hedgecoke harvested chaga during the winter season. She harvested in January and continued until late April 2020. She could do this work because she only harvested chaga when she felt well enough to do so. She sold chaga to Arctic Chaga, a store in Fairbanks. She was paid \$10.00 a pound. Prior to March 16, 2020 Arctic Chaga bought 100% of her chaga harvest and she made about \$1,000.00 during that timeframe. She continued harvesting chaga after the March 16, 2020 closures. She planned to harvest and sell chaga as long as the season lasted, which was until snow melt, normally in early May. However, in April Arctic Chaga only purchased 80% of her crop and did not want any more because they were scaling down their business due to Covid-19 closures.

Through harvesting and selling chaga Ms. Hedgecoke developed a relationship with the owners of Arctic Chaga. In early March 2020 they contracted with her to work in the store 6-7 hours a week to prepare the teas and tinctures they sold in the store. She was paid \$10.00 an hour. This was part time work with flexible hours. Because of the flexible hours she could do this work even with her medical problems and doctor appointments. Based on conversations with the owners, it was her expectation, before the closures, that she would work in their store preparing chaga indefinitely. When school closed on March 16, 2020 Ms. Hedgecoke couldn't continue with her work at Arctic Chaga as she had to provide daytime supervision and care for her son. Even if she had had childcare, Arctic Chaga closed its store during after March 16 and did not reopen.

Ms. Hedgecoke's child remained in remote learning for the rest of school year of 2019-2020. The first day of school closure was March 16, 2020<sup>4</sup> and the last day of school was May 19, 2020.<sup>5</sup> Ms. Hedgecoke is a single parent. She was the parent responsible for her child's care and needed to be home to supervise him. In anticipation of working at Arctic Chaga during the summer, Ms. Hedgecoke had childcare set up for summer 2020. That daycare arrangement was not interrupted by Covid-19. By mid-May of 2020 Ms. Hedgecoke's medical condition had deteriorated to

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<sup>4</sup> Exhibit 1: Page 10.

<sup>5</sup> Fairbanks North Star School District academic calendar.

the point that she could not easily have kept working even if Covid-19 closures had not closed her son's school or Arctic Chaga. Ms. Hedgecoke testified that after May 10, 2020 she probably could not have been able to work even 6-7 hours a week.

### **EXCERPTS OF RELEVANT PROVISIONS OF LAW**

#### **AS 23.20.340 provides in part,**

(e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 days after the claimant is notified in person of the determination or redetermination or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of circumstances beyond the claimant's control.

#### **8 AAC 85.151 provides in part,**

- (b) An appeal may be filed with a referee, at any employment center, or at the central office of the division and, if filed in person, must be made on forms provided by the division. An appeal must be filed within 30 days after the determination or redetermination is personally delivered to the claimant or not later than 30 days after the date the determination or redetermination is mailed to the claimant's last address of record. The 30-day time period will be computed under Rule 6 of the Rules of Civil Procedure. However, the 30-day period may be extended for a reasonable time if the claimant shows that the failure to file within this period was the result of circumstances beyond his or her control.

#### **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—

(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.

...\*...\*

(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 pandemic (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)...

#### **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.

#### **Attachment I to UIPL No. 16-20, Change 4 Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions Revised January 8, 2021**

Section 2102 of the CARES Act provides for payment of PUA to “covered individuals.” A “covered individual” is someone who meets each of the following three conditions:

Condition #1: The individual is not eligible for regular UC, EB, or PEUC. This includes an individual who has exhausted all rights to such benefits, as well as an individual who is self-employed, seeking part-time employment, lacking sufficient work history,

or who is otherwise not qualified for regular UC, EB, or PEUC. Self-employed individuals include independent contractors and gig economy workers.

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Under Condition #1, an individual “lacking sufficient work history” means an individual: 1) with a recent attachment to the labor force (meaning that he or she worked at some point from the start of the applicable tax year to the date of filing...

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

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 to UIPL No. 16-20 Change I:**

41. Question: An example provided for section 2102(a)(3)(A)(ii)(I) (ff) of the CARES Act in UIPL No. 16-20 explains that an individual whose health care provider advises him or her to self-quarantine due to a compromised immune system by virtue of a serious health condition may be eligible for PUA. Are there other reasons that an individual may be eligible for PUA under this clause?

Answer: Yes. The examples in UIPL No. 16-20 are not intended to be exclusive or comprehensive. Regardless of the underlying reason for an individual’s increased risk for COVID-19, section 2102(a)(3)(A)(ii)(I) (ff) of the CARES Act applies to all individuals who are advised by a health care provider to self-quarantine due to concerns related to COVID-19. Without having been advised by a health care provider to self-quarantine, an individual who does not go to work due to general concerns about exposure to COVID-19, and who does not meet any of the other COVID-related criteria for PUA, is not eligible for PUA.

**APPLICATION**

**Timeliness**

When an appeal is not lodged within the 30-day period, the claimant has the burden to establish that some circumstance beyond her control prevented the timely filing of the appeal. This tribunal finds that the claimant has met her burden. Exhibit 1, and Ms. Hedgecoke’s testimony establish that Ms. Hedgecoke was reasonably mistaken about the need to appeal, that she took reasonable steps to try and clarify her status, and that she was unable to file on time due to the volume of phone calls to the Division when she called in on March 26, 2020 and March 31, 2020.<sup>6</sup> Exhibit 1, page 14 shows that Ms. Hedgecoke tried to reach the Division on March 26, 2020 after

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<sup>6</sup> Exhibit 1, Pages 14 and 20.

receiving the Division's March 22 letter<sup>7</sup>. Exhibit 1, Page 14 shows that Ms. Hedgecoke called the Division on March 26, 2021. This call was made 3 days before the appeal filing deadline. She called again on March 31, 2020 and again could not get through to staff. The evidence also establishes that Ms. Hedgecoke filed the appeal the first time she was able to talk to staff. The appeal was filed only 10 days late. The facts support the finding that Ms. Hedgecoke would most likely have filed a timely appeal on March 26<sup>th</sup> if the volume of calls to the Division had not precluded her from reaching staff on that day. Thus, it is the determination of this tribunal that the appeal was 10 days late due to circumstances beyond her control.

## **Merits**

Ms. Hedgecoke was attached to the workforce in January, February and March of 2020 through her part-time work harvesting and processing chaga mushrooms. She remained attached to the workforce and was working a part time, flexible hour job preparing chaga when Covid-19 closures began. While she did not work more than a few hours per week, it was sufficient to qualify her for PUA benefits as established by the UIPL response to Question 11, above.

She was still engaged in both endeavors when her child's school transitioned to remote learning on March 16, 2020. The documentary and testimonial evidence from the August 16, 2021 and October 8, 2021 hearings establishes that Ms. Hedgecoke was able and available to work in March, April and part of May 2020 but was unable to work beginning March 16, 2020 because her son's school closed due to Covid-19. This qualifies her as a covered individual.<sup>8</sup> At the time the school closed she was engaged in work both harvesting and processing chaga, with a reasonable expectation that the part time work of processing chaga would continue indefinitely.

Her status as a covered individual under section (dd) would have ended when school was dismissed on May 19, 2020. However, by May 10, 2020 Ms. Hedgecoke was not able or available to work due to non-COVID-19 medical issues.

A question before this tribunal is whether her own medical condition separately qualified her for PUA benefits under section (ff). Her testimony and her doctor's note establish that as of June 2020 she had renal and heart failure. These conditions were sufficient to identify her as a person whose underlying medical conditions put her at high risk of hospitalization or death if she contracted COVID-19. Kidney disease is identified by the CDC as a high-risk medical condition. However, section (ff) specifically requires that, in addition to having the medical conditions, the claimant has to be aware that she has such conditions, and a health care provider has to advise the claimant not to work. Dr. Lefler's note and Ms. Hedgecoke's testimony establishes that Ms. Hedgecoke was, in fact unable to work beginning June 2020 due to the severe kidney and heart disease. However, that diagnosis was not contemporaneous to when she left the marketplace due to being too sick to work. In June 2020, and continuing until the December 2020 diagnosis, neither Ms. Hedgecoke, nor her doctor, knew she had kidney disease and thus no health care provider advised her to self-isolate. Based on Dr. Lefler's opinion that Ms. Hedgecoke was

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<sup>7</sup> Exhibit 1, Pages 5-6.

<sup>8</sup> The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (3)(A)(I) (dd).

medically unable to work as of June 2020, and her own testimony that working even part time would likely have been impossible after May 10, 2020 it is determined that Ms. Hedgecoke's eligibility ends the week ending May 16, 2020 since she was too ill to have been able or available to work after that point.

## DECISION

### Timeliness

The claimant's appeal from the notice of determination issued on February 26, 2021 is **ACCEPTED** as timely filed.

### Merits

The Division's determination that Ms. Hedgecoke is ineligible for PUA benefits is **Reversed**. Ms. Hedgecoke is eligible for PUA benefits beginning the week that ended on March 21, 2020. Her eligibility for PUA benefits continued until the week ending May 16, 2020.

Dated: October 15, 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

If the division continues to seek recovery of previously paid benefits after this decision Ms. Hedgecoke 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. Hedgecoke must be given a separate appeal hearing on that issue if she requests. This decision will affect repayment of previously approved benefits. 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. Hedgecoke can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).



**CERTIFICATE OF SERVICE**

I certify that on October 15, 2021 the foregoing decision was served on Ms. Hedgecoke (by mail & email). A copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.

A solid black rectangular box redacting the signature of the certifier.

Office of Administrative Hearings