

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

In the Matter of )  
 )  
GLORIA JAMES ) OAH No. 21-1578-PUA  
 ) Agency No. P21 807  
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**APPEAL DECISION**

**Docket Number:** P21 807

**Hearing Date:** September 9, 2021

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Gloria James

None

**CASE HISTORY**

Gloria James appealed a May 18, 2021 determination denying Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. The decision was recorded in Letter ID L0013147036. 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 in a recorded hearing on September 9, 2021. Ms. James testified telephonically and under oath. Mr. David Angi, the claimant's husband, also 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. These documents were identified as Exhibit 1, which was admitted into evidence.

The record was held open until September 22, 2021 to allow Ms. James to file additional documentation specific to her businesses, Glo-Taxi and Cheeseburgers and Fries To-Go, and to provide information regarding a Tribal Marine Mammal Monitor position. The documents that were received on September 20, 2021 are identified as Exhibit A. Exhibit A is admitted into evidence.

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

## FINDINGS OF FACT

Ms. James lives in the Native Village of Gambell [Gambell].<sup>1</sup> This is a remote village on St. Lawrence Island in the Bering Sea. It is 200 miles to Nome, Alaska. In 2020 Gambell had a full-time reported population of 686. The economy is mostly subsistence, with some commercial fishing and tourism. The residents speak either Siberian Yupik, English, or both. Ms. James stated that she uses both languages, and that English is not her “first” language. There is no bank in Gambell. In addition to the statewide closures related to the COVID-19 pandemic, Gambell’s governing body issued social distancing rules earlier in the pandemic than the March 18, 2020 state closures.<sup>2</sup> In addition, in the fall of 2020 curfews were in place after an outbreak started in mid-September 2020<sup>3</sup>. The tourism season, particularly the birding tourists, were able to return to Gambell for the spring season that began in mid-May 2021.

Ms. James filed for PUA benefits on June 9, 2020. She based her claim for PUA benefits on two separate economic activities that she had expected to continue to be engaged in for all of 2020. One business is Glo-Taxi, her ATV taxi service. The other business she operates is Cheeseburgers and Fries To-Go. This business is based on the making and selling of food plates to locals and tourists. During the hearing on September 9, 2021, it became clear that Ms. James might also have a claim based on an offer of employment from Gambell that was later withdrawn. The job at issue was serving as Tribal Marine Mammal Monitor.

Ms. James did not file taxes in 2019.<sup>4</sup> Mr. Angi testified that they did not make enough money in 2019 to file taxes. Ms. James informed the Division that she had not filed 2019 taxes because she didn’t make enough money<sup>5</sup>. Ms. James does not have a bank account.

### Regarding Glo-Taxi.

Ms. James has an ATV. In 2019 and early 2020 she rented it out to locals and provided taxi rides. This service was provided by Ms. James year-round. During the summer and fall birding season she also provided rides to birders who came to Gambell. The birding season in Gambell, according to the Golden Gate Audubon Society, is from mid-May through June, and again from mid-August through October. Ms. James earned about \$100.00 a day during birding season<sup>6</sup>. The rest of the year

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1. Traditional name; Sivuquaq.

2. Exhibit 1; Page 21.

3. St. Lawrence Island village of Gambell contending with COVID-19 outbreak. October 1, 2020; Anchorage Daily News.

4 A person does not have to file taxes if their net income is less than the standard deduction for their filing status. For 2020 the standard deductions were \$12,400, \$18,650 and \$24,800 depending on if a person was filing single, head of household or jointly.

5 Exhibit 1; Page 21.

6. Exhibit A, Letter from Kim Risen, birdwatcher.

she charged locals \$5.00-\$7.00 dollars per person per ride. Fares were paid in cash. The cash was then used to get gas and oil for the ATV, and to cover normal living expenses. The normal destination was to the airport, into town and out to birding locations. She estimated that in 2019 she earned \$7,000 - \$10,000 driving the ATV taxi.

The COVID-19 precautions and alerts to social distance and stay home began in Gambell in February 2020.<sup>7</sup> By mid-February the claimant's taxi business slowed down considerably, and it had stopped completely by April 2020. Locals were primarily staying at home and it was not possible to drive someone on an ATV and maintain 6 feet of distance. COVID-19 also shut down the birding seasons for 2020 which were a significant part of her income from this business.

Ms. James did not have a business license for Glo-Taxi. Her taxi business was strictly cash and she did not get or provide receipts. She provided credible testimony to support her claim that in 2019 and early 2020 she had an ongoing business providing ATV taxi rides to locals and tourists and that the business revenue was significantly diminished by COVID-19 factors.

#### Regarding Cheeseburgers and French Fries To-Go.

Ms. James also had an ongoing enterprise making and delivering food. She made plates of traditional indigenous food that locals often bought, and she made cheeseburgers and homemade french fries for locals and tourists. The food sold for \$12.00 a plate. This business had been operational for a couple of years before 2020.<sup>8</sup> She estimated that in 2019 she made about \$120.00 - \$300.00 a day during bird season which she identified as her primary source of income for that job.<sup>9</sup> This business was also strictly cash, and she did not get or provide receipts. Ms. James provided credible testimony of her good faith, but unsuccessful, attempts to gather receipts from the AC store in Nome. By the time the Division had asked her for proof of income, more than a year had passed, and AC staff reported that their computer records did not go back as far January 2020.

#### Regarding Tribal Marine Mammal Monitor.

For several years Ms. James worked as a Tribal Marine Mammal Monitor<sup>10</sup>. This position was through Gambell's Tribal Marine Management Committee and funded by grants that Gambell received through the Eskimo Walrus Commission. The job of a Tribal Marine Mammal Monitor is to meet each boat as it docks and count all marine mammals that were harvested directly, or as by-catch. Ms. James reports that in the past she worked 18-hour days when lots of boats were in harbor. Other days, she

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7. Exhibit 1, Page 21.

8. Exhibit 1, Page 21.

9. Exhibit 1, Page 10.

<sup>10</sup> Exhibit 1, Page 9.

might work only a few hours or not work at all. In her previous years working this position, she was an employee and was paid \$20.00 an hour.

Ms. James reported that she was informed by Melvin Apassingok, a member of Gambell's Tribal Marine Management Committee, that the grant had been approved for the 2020 season and that she was hired to be a Tribal Marine Mammal Monitor for the upcoming 2020 season. She expected to start in early March. Ms. James was candid that she did not know if the job was "vested" with a clear start date, or still contingent on the grant being issued to Gambell. Upon request of this tribunal further information was provided by the Tribal Marine Management Committee but that still did not resolve the issue.<sup>11</sup>

Ms. James applied for PUA benefits in early June of 2020, and DETS apparently made an initial determination that she was eligible and awarded her a substantial sum of benefits. DETS later determined, however, that she was not eligible for PUA benefits because she was not impacted by COVID-19 in a manner that made her a "covered individual" under the program. When DETS provided this notice to the claimant, she was apparently told she would have to repay the overpaid benefits. It is not clear whether she was ever given a formal written notice to repay, or whether she has ever been informed of the opportunity for a hearing regarding the overpayment liability and repayment obligation.

### **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—

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<sup>11</sup> Exhibit A.

(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;

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(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 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...

## APPLICATION

In its May 18, 2021 letter denying eligibility, the Division noted: “You are self-employed with Glo Taxi and Cheeseburgers and [F]ries to [G]o, however, you do not have a business license or 2019 proof of income. Also, you had stated that your husband is able to watch the children in order for you to work.”<sup>12</sup>

This tribunal finds that Ms. James, and her witness, provided credible evidence that Ms. James was attached to the workforce in 2019 and in 2020 through her self-employment with Glo Taxi and Cheeseburgers and Fries To-Go. This tribunal also finds that Ms. James has proved that her income in 2020 was significantly reduced, and indeed virtually cancelled, directly due to Covid-19 related factors. Ms. James has also established that the impact on both businesses began in mid-February 2020. Her eligibility for PUA benefits continued at least through the week ending January 2, 2021. However, whether her eligibility continued until the week ending May 15, 2021, when the spring birding season resumed and the taxi business could resume, must be addressed by the Division upon a remand.

This tribunal finds that there is currently not sufficient information to determine if Ms. James had been offered a firm job as a Tribal Marine Mammal Monitor. However, that job would have begun in March 2020 and ended by December 2020. The above finding, that the loss of income to Glo-Taxi and Cheeseburgers and Fries To-Go makes Ms. James eligible for PUA benefits, renders the issue of the Tribal Marine Mammal Monitor job moot.

The Division denied Ms. James PUA benefits because she did not provide documentary proof of income for 2019. The Division wanted the documentary evidence for 2019 income in order to compare it to 2020 income and assess if her 2020 income had been significantly diminished.<sup>13</sup> Given the remoteness of the village and the subsistence culture in Gambell, it is not surprising that Ms. James did not file taxes, have a bank account or otherwise maintain business records tracking her taxi and food to-go enterprises. Additionally, since the income earned in 2019 did not rise to a taxable level, it is understandable that she did not file taxes for 2019. While Ms. James did not earn a taxable wage in either enterprise, she did provide credible testimony that she earned a significant part of her 2019 non-subsistence income with Glo-Taxi and Cheeseburgers and Fries To-Go. When a claimant does not have documentary proof of income, she can still be eligible for benefits in 2020 if it is determined that there was an attachment to the labor market and that the claimant must have experienced a loss of wages and hours.<sup>14</sup> This tribunal finds that in 2019 and continuing into early 2020 Ms. James was attached to the labor market, and that beginning in mid-

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<sup>12</sup> Exhibit 1, Page 26.

<sup>13</sup> Exhibit 1, Page 21.

<sup>14</sup> UIPL Change 1 issued April 27, 2020; Attachment to UIPL#16-20 Change 1: response to Questions 11, 19 and 21.

February 2020 she experienced a significant diminishment of income as a result of the Covid-19 pandemic.

It is determined that her eligibility for PUA benefits began the week ending February 15, 2020 and continued through the week ending December 26, 2020.

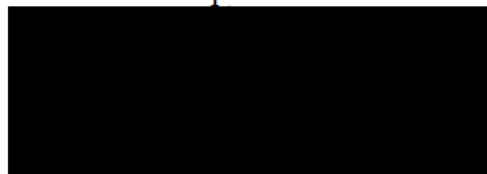
However, for benefits for the period beginning the week ending January 2, 2021, the Continued Assistance Act, Pub Law 116-260, may require more formal documentation than has been presented to date. That issue cannot be decided based on the record presented in this appeal.

This tribunal finds that Ms. James has acted in good faith throughout this process. The tribunal also finds that the reality of operating a legitimate, but low-income, business in rural Alaska may put a burden to provide documentation on claimants that cannot reasonably be met, particularly when they are not informed of the need to have and produce such documents until many months after applying for and receiving PUA benefits.

### **DECISION**

It is the determination of this tribunal that Ms. James met the definition of a covered individual pursuant to the CARES Act of 2020, Public Law 116-136. The DETS May 18, 2021 determination that she was ineligible for PUA benefits is **REVERSED** in part. Her eligibility began the week ending February 15, 2020 and continued through the week ending December 26, 2020. The tribunal **REMANDS** to DETS to make a determination on the issue of eligibility beginning with the week ending January 2, 2021, as that eligibility is affected by the Continued Assistance Act documentation requirements. This issue has not been determined by the tribunal. If the Division needs additional documents, Ms. James has good cause to receive additional time to provide such documents.

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**

If the Division continues to seek recovery of previously paid benefits after this decision, Ms. James can apply for a waiver from repayment. No waiver will be granted by the Division if Ms. James does not seek it. If a waiver is sought but not granted, Ms. James 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. James 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 November 23, 2021, the foregoing decision was served on Gloria James (by mail and email). A 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