

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

In the Matter of )  
 )  
RENEE BULLOCK ) OAH No. 21-1811-PUA  
 ) Agency No. P21 899  
\_\_\_\_\_ )

**APPEAL DECISION**

**Docket Number:** P21 899

**Hearing Date:** 10/7/21

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Renee Bullock

None

**CASE HISTORY**

The claimant, Renee Bullock timely appealed a May 28, 2021 determination 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 September 1, 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 October 7, 2021. During the hearing, Ms. Bullock testified under oath. The Division of Employment and Training Services (DETS) provided written materials but did not otherwise participate.

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

**FINDINGS OF FACT**

Renee Bullock established a claim for Pandemic Unemployment Assistance benefits effective the week ending December 12, 2020. The Division seemingly initially determined that the claimant was impacted by COVID-19 in a manner that made her a covered individual under the program, and therefore eligible for PUA benefits. The Division apparently later reversed that decision and is now seeking recoupment of approximately \$8,000 in benefits Ms. Bullock was previously paid.

For many years prior to the pandemic Ms. Bullock worked as a self-employed handyperson, operating under the business license Jill of All Trades Co. In 2017 she and her husband moved into a multiplex located at [REDACTED] in Fairbanks, Alaska, owned by Terrance McClain. They agreed to be the building caretakers, charging \$25 per hour, with time worked to be deducted from their

monthly rent obligation. The claimant testified that her husband was in poor health and collected social security. She, however, habitually assisted with property maintenance, snow shoveling, and tenant move-outs, resulting in 70% of their \$1550 monthly rent being consistently forgiven.

This work/living arrangement continued through April 2020, when Mr. McClain passed away. Reportedly due to a COVID-19-related no fly order, his widow could not fly up from Texas to Alaska to manage the property, so she asked the claimant to take on even greater building management responsibility. Ms. Bullock and her husband remained the property managers through September 2020, but remained residents through October 2020, completing enough hours to entirely cover their rent, and even spending extra, uncompensated time clearing a lot behind the multiplex.

In November 2020 the claimant moved out of the [REDACTED] property and signed a 6-month lease on what she described as a towable, livable structure. Ms. Bullock planned to open a kitchen for takeout food, as she envisioned people eager to patronize a safe, socially distanced place to get a meal during the COVID-19 pandemic. Her project stalled, however, as funding and credit issues prevented her from buying the necessary supplies, and hiring staff was problematic.

Ms. Bullock explained that she had additional business plans after receiving PUA benefits but then received the redetermination that she must repay the money.

#### **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;

(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).

**Unemployment Insurance Program Letter (UIPL) 16-20, Issued by the U.S. Department of Labor on April 5, 2020:**

Regarding the additional criteria established by the Secretary for unemployment assistance under this section:

■ The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities and has thereby forced the individual to suspend such activities. . . .

**UIPL 16-20, Issued by the U.S. Department of Labor on 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, even absent a suspension of services.

**APPLICATION**

Ms. Bullock’s claim cannot be sustained. From September 2017 through October 2020, she and her husband were caretakers of the multiplex apartment building located at [REDACTED] in Fairbanks, Alaska. Until April 2020 they had an agreement to work for reduced rent, and the claimant testified that she routinely completed enough hours at a rate of \$25 an hour to reduce their rent by 75%. In April 2020, when the pandemic began to hit Alaska in earnest, the claimant’s hours as a caretaker increased. Through October 2020 Ms. Bullock testified that she worked enough hours to entirely cover their rent of \$1550.

After moving into a towable housing unit in November 2020, the claimant described plans to open a food kitchen. This vision was not derailed by any reasons specifically attributable to the COVID-19 pandemic, however. Rather, Ms. Bullock struggled with credit and purchasing difficulties that made buying necessary supplies impossible. She claimed hiring workers was hard, although it seems a kitchen would need to be established before staff could be hired.

Since November 2020 the claimant did not show that the pandemic has severely limited her ability to continue working as a handyperson under her Jill of All Trades Co. license. Since previously her work included outdoor projects like snow removal, it is not clear why she could not return to similar tasks that could be performed safely during the pandemic. When asked if she wanted additional time to submit documentation of withdrawn job offers or other communication with clients fearful of employing her services during the pandemic, the claimant declined.

Regarding her work as a caretaker at an apartment complex in 2020, the claimant did not establish that she suffered a “significant diminution” of business services due to the pandemic. Rather, the evidence is that her hours actually increased, allowing her to completely mitigate her entire monthly rent obligation from April through October 2020.

The claimant had a plan to start a new food business sometime after November 2020, despite being fully aware a global pandemic was underway. Any difficulties with funding, staffing, or procuring supplies that were related to COVID-19, not her own personal issues, were not unexpected. Such assumed hardships with the launch of a new business are not a basis for eligibility under the PUA program.

The Tribunal cannot find that the claimant meets the definition of a covered individual as described in Section 2102 of the CARES Act.

If the net effect of this decision results in DETS’s overpayment claim remains in effect, the claimant may qualify for a waiver from recoupment or, if a waiver were not granted, she must at least be afforded an appeal hearing in which such matters as estoppel could be explored.<sup>1</sup> The present referral does not encompass these issues, and the present decision does not decide them for or against the claimant here.

The Division has advised 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, the claimant can call the BPC at 907-465-2863, 1-888-810-6789, or email to [jnu.bpc@alaska.gov](mailto:jnu.bpc@alaska.gov).

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<sup>1</sup> When DETS seeks repayment, the claimant must be informed of the opportunity to seek a waiver excusing her from repayment, the opportunity for a hearing on that issue, and any other matters covered in UIPL 16-20 Change 4, Sec. 4(d) & Att. I sec. C.21.b.

## DECISION

The determination issued on June 3, 2021 is **AFFIRMED**. The claimant is not eligible for benefits from the Pandemic Unemployment Assistance (PUA) program.

Dated: October 11, 2021

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Danika B. Swanson  
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 12, 2021, the foregoing decision was served on Renee Bullock (by 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