

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

In the Matter of)	
)	
EMILY VANSICKLE)	OAH No. 21-1884-PUA
_____)	Agency No. P21 934

APPEAL DECISION

Docket Number: P21 934

Hearing Date: October 21, 2021

CLAIMANT APPEARANCES:

DETS APPEARANCES:

Emily Vansickle

None

CASE HISTORY

The claimant, Emily Vansickle, timely appealed a July 28, 2021 re-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. 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 21, 2021.

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

FINDINGS OF FACT

Emily Vansickle established a claim for Pandemic Unemployment Assistance benefits effective the week ending March 14, 2020. The Division originally approved her claim and paid benefits. On July 28, 2021, the Division issued a re-determination that the claimant 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.

Emily Vansickle, her husband, and young son moved to Homer, Alaska after the death of one of Ms. Vansickle's family members so they could be closer to her remaining family. In December 2019 Ms. Vansickle took a job as the receptionist at Revolution Sport and Spine Therapy, LLC (Spine Clinic). On February 8, 2020 Ms. Vansickle

resigned from the job after experiencing hyperemesis gravidarum with her pregnancy.¹ Ms. Vansickle remained home for the remainder of her pregnancy.

One of Ms. Vansickle's co-workers had been scheduled to take a trip to Wuhan, China but cancelled that trip before Ms. Vansickle's resignation due to information about the severe, novel respiratory disease then occurring. Ms. Vansickle, thus, had heard about COVID-19 before she quit her receptionist job, but it was not a motivating factor for her.

The elementary school for Ms. Vansickle's son closed after the Governor's Disaster Declaration and Infrastructure Orders in March 2020. She and her son self-isolated until the birth of her second child. Ms. Vansickle supervised his remote schoolwork and provided primary care.

Ms. Vansickle filed a claim for PUA benefits effective the week ending March 14, 2020. In her application she informed the Division that she gave notice on February 8, 2020 and the primary reason for her resignation was "quit due to medical condition."² The Spine Clinic confirmed that Ms. Vansickle resigned before making enough money to qualify for regular unemployment insurance (UI) because she was pregnant.³

On her electronic PUA application, Ms. Vansickle also checked the box that a "child or other person in my household for which I am the primary caregiver 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 me to work."⁴ Notably, the application does not ask the claimant if they had to quit work or reduce their hours to provide primary care, whether there are also other reasons they do not work, or whether they were working prior to the school closure.

The Division interviewed Ms. Vansickle on July 28, 2021. Ms. Vansickle explained that she quit work at the Spine Clinic before the pandemic and her decision to do so was not related to COVID-19. At that time the Division reconsidered her claim and retroactively denied it. The Division then sent a demand for previously paid benefits.

Ms. Vansickle appealed.

At the appeal hearing, Ms. Vansickle candidly related the same information to the ALJ that she gave to the Division. She testified she filled out the information in good faith. The information she provided was accurate: she resigned due to her pregnancy and was her son's primary caretaker when his school closed. She would not have been able to work while his school was closed even if her pregnancy had been easy enough for her to do so. The electronic application did not ask if she'd had to quit or reduce

¹ Hyperemesis gravidarum is an uncommon disorder in which extreme, persistent nausea and vomiting occur during pregnancy.

² Ex. 1, pp. 10.

³ *Id.* at 12.

⁴ *Id.* at 16.

work to become his primary caretaker, and she answered the question as it was reasonably read. If there was a misunderstanding, it was made in good faith according to Ms. Vansickle.

Ms. Vansickle testified she relied on the Division's expertise to determine whether she qualified for benefits. Once she received the benefits, she used them to support herself and family. Her husband's job was also impacted by the pandemic. The PUA benefits were essentially their primary income for a significant period.

EXCERPTS OF RELEVANT PROVISIONS OF LAW

The CARES Act of 2020, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law.⁵ The CARES Act creates three new unemployment insurance assistance (UI) programs: Pandemic Unemployment Compensation (PUC), Pandemic Emergency Unemployment Compensation, (PEUC) and Pandemic Unemployment Assistance (PUA). PUA provides emergency unemployment assistance to workers who are left out of regular state UI or who have exhausted their state UI benefits(including any Extended Benefits that might become available in the future).⁶

To be eligible, PUA applicants must establish that they are a covered individual under the ACT. CARES Act, Pub. L .No. 116-136 § 2102(a)(3)(A) defines "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—

⁵ CARES Act, S. 3548, 116th Cong. (2002).

⁶ *Id.*

(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).

APPLICATION

Ms. Vansickle was not a covered individual under the CARES Act: she was unable to demonstrate that her circumstances met any of the listed criteria.

The CARES Act, Public Law 116-136, Title II, Sec. 2102 Pandemic Unemployment Assistance (PUA) defines a “covered individual” as a person who is not eligible for unemployment benefits under any State or Federal program and who is unemployed because of one or more reasons related to the COVID-19 pandemic. The Division’s rationale for finding the claimant ineligible for PUA benefits is based on a fundamental premise of the law governing PUA eligibility: Ms. Vansickle was not attached to the work force at the time she applied for benefits.

To be eligible for PUA benefits, a person must be able to show that the pandemic caused them to lose either a job or a contracted-for or agreed-upon job opportunity. Each of the eligibility categories from the CARES Act listed above describes a scenario where a person lost a job or hours at a job, was forced to quit a job, or was unable to get to their place of work, and variations on those themes, all as a result of the COVID-19 pandemic. Here, Ms. Vansickle readily admitted in her testimony that she did not lose an actual job as a result of the pandemic, nor had she accepted a job offer that she was unable to start due to the pandemic. Ms. Vansickle resigned from employment to take extended pregnancy leave. She anticipated being able to return to employment when that leave was over, but she did not have a confirmed offer or date to do so. The pandemic subsequently impacted her household due to the closure of her son’s school and later restricted her anticipated return to the labor force because there were no jobs available. Based on these undisputed facts, DETS’s re-determination that the claimant was not eligible for PUA benefits was correct.

NOTICE REGARDING POSSIBLE WAIVER OF REPAYMENT OF BENEFITS

Ms. Vansickle testified she was told that she would have to repay about \$32,000.00.

It is possible that, if she applies, Ms. Vansickle will qualify for a waiver from recoupment. According to Ms. Vansickle she acted in good faith and repayment would cause an undue hardship to herself and family. If a waiver is not granted, she must be given a separate appeal hearing on that issue.⁷ The present referral does not

⁷ When DETS seeks repayment, the claimant must be informed of the opportunity to seek a waiver excusing them 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.


encompass these issues, and the present decision does not decide them for or against Ms. Vansickle.

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 and to request a waiver, the claimant can call the BPC at 907-465-2863, 1-888-810-6789, or email to jnu.bpc@alaska.gov

DECISION

The July 28, 2021 re-determination decision by the Division is **Affirmed**.

Dated: October 25, 2021,



Carmen E. Clark
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 27, 2021, the foregoing decision was served on Emily Vansickle (by mail/email). A courtesy copy has been emailed to the DETS UI Technical Team, UI Support Team, and UI Appeals Team.


Office of Administrative Hearings