

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

In the Matter of	)	
	)	
SHANNELLE MACPHERSON	)	OAH No. 22-0374-PUA
	)	Agency No. P22 026 03

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**APPEAL DECISION**

**Docket Number:** P22 026 03

**Hearing Date:** May 12, 2022

**CLAIMANT APPEARANCES:**

**DETS APPEARANCES:**

Shannelle MacPherson

None

**CASE HISTORY**

The claimant, Shannelle MacPherson, appealed three 2020 determinations (Letter IDs L0003855815, L0003375161, and L0005637147) and one 2021 determination (Letter ID L0014225108) denying her Pandemic Unemployment Assistance (PUA) benefits under the CARES Act, Public Law 116-136. Ms. MacPherson appealed the decisions on April 20, 2022, between nine and 21 months after they were issued.

The Department of Labor and Workforce Development referred the appeal to the Office of Administrative Hearings at the end of April 2022. 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 recorded hearing took place on May 12, 2022. Ms. MacPherson testified under oath. At its own election, the Division of Employment and Training Services (DETS) provided written materials but was not a live participant.

The matter was referred to the ALJ to consider two issues, in sequence: whether the lateness of the appeal disqualifies the claimant from challenging the determination, and if not, whether she meets the eligibility requirements of the Act.

**FINDINGS OF FACT**

When the pandemic began in 2020, Ms. MacPherson was apparently trying to make preparations to start a cleaning business. She did not have any existing customers. She reports that it was difficult to get a business license due to pandemic-related delays, and that her advertising and door-to-door solicitations were unsuccessful in generating business due to the pandemic. In addition, she herself caught Covid three times.

She filed a claim for PUA on this basis in the spring or early summer of 2020, but never received any benefits. She claimed Covid-19 impact back to the week ending February 8, 2020. She continued filing online in most weeks until mid-October of 2020. She began a long incarceration on October 26, 2020, and she claims no PUA eligibility thereafter. She was released on December 27, 2021.

Ms. MacPherson originally filed for PUA using an address on 62<sup>nd</sup> Avenue. However, this was no longer a good address for her by August of 2020, if not sooner. She did not change her address in the system until April 20, 2022.

DETS denied benefits as follows:

<b>Date</b>	<b>Span Denied</b>	<b>Reason</b>
July 29, 2020	All	Failed to verify ID
August 17, 2020	All	Failed to respond to an information request re basis for eligibility
October 21, 2020	Week ending Oct. 10, 2020 onward	Failed to file UI test claim
July 28, 2021	Week ending Oct. 31, 2020 onward	Not available for work (incarcerated)

Ms. MacPherson reports that she received none of these denials. More likely than not, this occurred because she had not updated her address with DETS.

All of the denial letters stated that the claimant could appeal the denial by following a specified appeal process within 30 days. Ms. MacPherson did not do so.

We should note that the eligibility problems identified in the first three letters would have been easy to solve. However, if Ms. MacPherson had provided full information about her basis for applying for PUA, she would then almost certainly have been denied because an independent contractor with no business history was generally ineligible for this program, as many decisions in other cases have confirmed.<sup>1</sup>

Ms. MacPherson called DETS on April 20, 2022, gave an updated address (where she had been since December of 2021), and registered an appeal of the denials of her claim.

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<sup>1</sup> E.g., *In re Shaw*, OAH No. 21-0139-PUA, DLWD No. P20 275 03 (2021) (published at <https://appeals.dol.alaska.gov/docs/trbdex/2020/P20%20275.pdf>).

## EXCERPTS OF RELEVANT PROVISIONS OF LAW

### Alaska Regulation 8 AAC 85.151 -- Filing of appeals

(a) An interested party may file an oral or written appeal from a determination or redetermination issued under AS 23.20 and this chapter. The appeal may be filed in person, by mail, or by telephone. An oral or written protest indicating a desire to appeal is an appeal to a referee or the commissioner.

(b) An appeal from a determination or redetermination on a claim for benefits may be filed with a referee or at any office of the division. An appeal must be filed no later than 30 days after the determination or redetermination is personally delivered to the appellant or no later than 30 days after the date the determination or redetermination is mailed to the appellant'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 appellant shows that the failure to file within this period was the result of circumstances beyond the appellant's control.

### APPLICATION

As the excerpt of law above indicates, a claimant has 30 days to appeal a denial determination. Ms. MacPherson did not contest the denials sent out to her in 2020 and 2021 within that time limit.

To extend the 30-day appeal period, a claimant must show that her failure to timely appeal was due to circumstances beyond her control. Even if this showing is made, the appeal period can only be extended for a reasonable time.

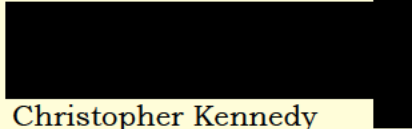
In this case, there is no basis to attribute the lateness of Ms. MacPherson's appeal to circumstances beyond her control. In the summer of 2020, she continued to file for PUA but did not update her address so that the Division could contact her successfully. She also must have known at some point that her claim had been denied, since she received no benefits. Nonetheless, after she was released from prison in December 2021, she waited another four months before contacting DETS. This is too long a delay in the context of a 30-day time limit.

The claimant's appeal from the determinations issued in 2020 is **NOT ACCEPTED** as timely filed. Those determinations therefore remain in effect.

## DECISION

The determinations in Letter IDs L0003855815, L0003375161, L0014225108, and L0005637147 are **AFFIRMED** on the basis that the appeal was untimely.

Dated: May 13, 2022


  
Christopher Kennedy  
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 May 13, 2022 the foregoing decision was served on Shannelle M. MacPherson (by mail). A copy has been emailed to the DETS UI Technical Team, UI Appeals Team, & UI Support Team.

  
Office of Administrative Hearings



*Alaska Department of Labor and Workforce Development  
Appeals to the Commissioner*

Please read carefully the enclosed Appeal Tribunal decision. Any interested party (claimant or the Division of Employment and Training Services [DETS]) may request that the Commissioner accept an *appeal* against the decision (AS 23.20.430-435 and 8 AAC 85.154-155).

A Commissioner appeal must be filed within 30 days after the Appeal Tribunal decision is mailed to a party's last address of record. The 30-day period may be extended for a reasonable time if the appealing party shows that the appeal was late due to circumstances beyond the party's control.

A Commissioner appeal must be in writing and must fully explain your reason for the appeal. You or your authorized representative must sign the appeal. All other parties will be sent a copy of your appeal. Send Commissioner appeals *to the Commissioner's Hearing Officer* at the address below.

A Commissioner appeal is a matter of right if the Appeal Tribunal decision reversed or modified a DETS determination. If the Appeal Tribunal decision did not modify the DETS determination, the Commissioner is not required to accept the appeal. If the appeal is accepted, the Commissioner may affirm, modify, or reverse the Appeal Tribunal decision. The Commissioner may also refer the matter back to the Appeal Tribunal for another hearing and/or a new decision. The Commissioner will issue a written decision to all interested parties. The Commissioner decision will include a statement about the right to appeal to Superior Court.

Any party may present *written argument* to the Commissioner stating why the Appeal Tribunal decision should or should not be changed. Any party may also request to make an *oral argument*. Written argument and/or a request for oral argument should be made when you file an appeal or immediately after you receive notice that another party filed an appeal. You must supply a written argument or a request for oral argument promptly, because neither will likely be considered after the Commissioner issues a decision.

**ALASKA DEPARTMENT OF LABOR  
AND WORKFORCE DEVELOPMENT  
COMMISSIONER'S HEARING OFFICER  
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