



Docket No.: 20-028282

Case No.: 24375736

Employer:

Claimant:

SSN:

This is an important legal document. Please have someone translate the document.

هذه وثيقة قانونية مهمة. يرجى أن يكون هناك شخص ما يترجم المستند.

এটি একটি গুরুত্বপূর্ণ আইনি ডকুমেন্ট। দয়া করে কেউ দস্তাবেজ অনুবাদ করুন।

Este es un documento legal importante. Por favor, que alguien traduzca el documento.

这是一份重要的法律文件，请让别人翻译文件。

Ky është një dokument ligjor i rëndësishëm. Ju lutem, kini dikë ta përktheni dokumentin.

ORDER

The Agency's November 13, 2020 Redetermination is affirmed.

The claimant is ineligible from receiving benefits pursuant to the availability provision, Section 28(1)(c), of the Michigan Employment Security Act (Act).

Further determinations consistent with this decision are left to the Agency.

Decision Date: February 3, 2021


LINDSAY WILSON
ADMINISTRATIVE LAW JUDGE

20-028282

PARTICIPANTS

		01-27-21		
		Sworn	Sworn	Sworn
Claimant		X	X	
Representative	David Blanchard, Attorney for Claimant	X		
Witness				
Witness				
Witness				
Witness				
Employer				
Representative				
Witness				
Witness				
Witness				
Witness				
Witness				
Witness				
Witness				

EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
1			X	07-27-20		Letter from U.S. Department of Labor to State of Wisconsin (2 Pages)
2			X	07-27-20		State of Wisconsin Department of Workforce Development (DWD) News Release (2 Pages)
3			X	04-27-20		Unemployment Insurance Program Letter No. 16-20, Change 1, U.S. Department of Labor (26 Pages)
4			X	04-2020		Unemployment Insurance Agency Fact Sheet for Pandemic Unemployment Assistance (2 Pages)
5			X	01-25-21		Claimant's Written Statement (8 Pages)

JURISDICTION

On November 13, 2020, the claimant timely appealed a November 13, 2020 Unemployment Insurance Agency (Agency) Redetermination which held the claimant ineligible for benefits under the availability provision, Section 28(1)(c), of the Michigan Employment Security Act (Act), beginning March 22, 2020. The claimant was also required, under Section 62(a), to repay benefits improperly received.

ISSUE

Is the claimant ineligible for benefits under the availability provisions of Section 28(1)(c) of the Act?

APPLICABLE LAW

Section 28 of the Act provides:

(1) An unemployed individual is eligible to receive benefits with respect to any week only if the unemployment agency finds all of the following:

(c) The individual is able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character that the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available. An individual is considered unavailable for work under any of the following circumstances:

(i) The individual fails during a benefit year to notify or update a chargeable employer with telephone, electronic mail, or other information sufficient to allow the employer to contact the individual about available work.

(ii) The individual fails, without good cause, to respond to the unemployment agency within 14 calendar days of the later of the mailing of a notice to the address of record requiring the individual to contact the unemployment agency or of the leaving of a telephone message requesting a return call and providing a return name and telephone number on an automated answering device or with an individual answering the telephone number of record.

(iii) Unless the claimant shows good cause for failure to respond, mail sent to the individual's address of record is returned as

undeliverable and the telephone number of record has been disconnected or changed or is otherwise no longer associated with the individual.

The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948).

FINDINGS OF FACT

The claimant filed a claim for Pandemic Unemployment Assistance (PUA) and established a benefit year beginning March 22, 2020. Prior to filing her claim for PUA benefits, the claimant was self-employed and working on a part-time basis. As a result of the COVID-19 pandemic, the claimant's place of employment shut-down operations and the claimant lost her part-time employment. The claimant has since returned to part-time work in September 2020.

Since filing her claim for PUA benefits, the claimant has not been able and available to work full-time. The claimant's unavailability for full-time work arises from her receipt of Social Security Disability Insurance (SSDI). Since the claimant receives SSDI, she is only able and available to work part-time hours, not full-time hours.

REASONING AND CONCLUSIONS OF LAW

Section 2102(a)(3)(A) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act defines the term "covered individual" as follows:

(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—

* * *

(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

(Emphasis added).

As noted above, the claimant filed a PUA claim under the CARES Act. Section 2102(a)(3)(A) provides a two-part analysis as to whether an individual is considered to be a “covered individual” under the CARES Act. First, Section 2102(a)(3)(A)(i) provides that a covered individual is someone who “is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107” It was undisputed that the claimant meets this portion of the “covered individual” definition as she was previously self-employed and thus would not qualify for regular compensation.

Next, Section 2102(a)(3)(A)(ii)(I) of the CARES Act defines a “covered individual” as someone who “is otherwise able to work and available for work within the meaning of applicable State law. . . .” Under Section 28(1)(c) of the Michigan Employment Security Act, an individual shall be eligible to receive benefits if the individual is “able and available . . . to perform suitable full-time work of a character which the individual is qualified to perform by past experience or training.”

Here, it was undisputed that the claimant was not able or available to work full-time within the meaning of Section 28(1)(c) of the Act. The claimant acknowledged she is only able and available to work part-time due to her receipt of SSDI. Although the claimant’s separation from part-time work was due to a COVID-19 related reason, the CARES Act still requires the claimant to be able and available to work “within the meaning of applicable State law,” which under Michigan law is for full-time work. The claimant’s counsel argues that Subsections 2102(a)(3)(A)(i) and (ii)(I) are in conflict. However, a plain reading of these two subsections establishes they do not conflict, but are to be read as two distinct and separate requirements for meeting the definition of a “covered individual”.

The claimant’s counsel also argues that since Section 2102(a)(3)(A)(ii)(II) covers those who are “seeking part-time employment”, this is in contradiction to the requirement that the individual be “otherwise able to work and available to work within the meaning of applicable State law”. (See Exhibit 5, page 3). This argument, however, is not persuasive given the fact that the seeking work requirement is a separate eligibility requirement to the requirement of being “able and available to work” under state law. Additionally, Section 2102(a)(3)(A)(ii)(II) still requires that the individual “meets the requirements of subclause (I)”. Since the claimant is not able and available to work full-time as required under Michigan law, the claimant would be ineligible for benefits pursuant to the availability provision, Section 28(1)(c), of the Act.

Alternatively, the claimant argues that the July 27, 2020 U.S. Department of Labor (DOL) letter addressed to the State of Wisconsin Department of Workforce

Development, establishes that the claimant is eligible for PUA while receiving SSDI. (See Exhibit 1). This letter, however, provides an analysis under applicable Wisconsin state law, but does not address applicable Michigan state law. Additionally, the July 27, 2020 letter is an interpretation of Wisconsin state law that “provides an individual is “ineligible for benefits” for each week in the month in which an individual receives SSDI”. (*Id.*) The DOL’s conclusion is that the individual “may be eligible for a PUA benefit”, not that they shall be eligible. (*Id.*) The DOL’s analysis and/or conclusions do not address whether an individual receiving SSDI is able and available for full-time work and naturally makes no reference to the availability for full-time work requirements under Michigan law, which are the eligibility requirements at issue in this matter. It is further noted that upon review of the Wisconsin law cited in the claimant’s Exhibit 5, it appears that Wisconsin’s laws do not have the same ability and availability requirements as Michigan. Thus, it is impossible to determine whether the DOL would come to the same conclusions for SSDI recipients after reviewing the applicable Michigan law.

The UI Program Letter No. 16-20 Change 1, also uses similar permissive language by stating that an individual “*may be eligible*” for PUA benefits under certain circumstances. (See Exhibit 3). The claimant’s counsel specifically makes reference to Question 28 in the UI Program Letter No. 16-20 Change 1, which states:

Question: A full-time student who works part-time may be excluded from DUA because he or she has not lost their “principal source of income” as described under 20 C.F.R. 625.2(s). Is he or she eligible for PUA?

Answer: Yes. Provided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in section 2102(a)(3)(A)(ii)(I), then he or she may be eligible for PUA.

The requirement that the employment be the “principal source of income” under DUA does not apply to eligibility for PUA. (Exhibit 3, page 10).

On review of the UI Program Letter, it is first noted that this question specifically relates to students, not individuals receiving SSDI who are unable to work full-time. The fact that an individual may be eligible for PUA benefits when they were working part-time prior to the implementation of the CARES Act is not in question. However, just because an individual, such as a student, was only working part-time prior to the pandemic does not automatically indicate they were not able and available to work full-time. The distinction in this case is that the claimant is unable and unavailable to work full-time regardless of the COVID-19 related considerations.

Finally, the UIA Fact Sheet 172 for “Pandemic Unemployment Assistance (PUA) states that, “[u]nder PUA, individuals who are self-employed, independent contractors, nonprofit employees, gig economy workers, clergy and those working for religious

organizations not covered by regular unemployment compensation, and part-time workers may qualify for unemployment benefits." (Emphasis added). (See Exhibit 4).

Again, the guidance referenced above uses the terminology that a claimant "may" be eligible for PUA, rather than "shall" be eligible for PUA. This is an important distinction as the use of the word "may" shows that the finding of eligibility is dependent upon other eligibility requirements being met.

The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948). On review of the record and the evidence submitted, along with the applicable law, the claimant has failed to meet her burden of establishing that she is able and available for full-time work as required under Michigan law. The claimant is therefore ineligible for benefits under the availability provision, Section 28(1)(c), of the Act.

IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Unemployment Insurance Appeals Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

March 5, 2021

If you elect to file an appeal with the Unemployment Insurance Appeals Commission, your appeal should be filed within the deadline set forth in my decision/order. **Your appeal may be submitted to the Commission by US mail or fax. Additionally, you may file an appeal electronically by completing a fillable form on the Commission's website.** The website address is <https://www.michigan.gov/uiac> and that website includes instructions on how to file the appeal. Do not use your MiWAM account through the Unemployment Insurance Agency's online system to file an appeal to the Commission.

I, P. Osborne, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

English

IMPORTANT! This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

IMMEDIATELY: If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

Arabic

أ. "هام! يحتوي هذا المستند (المستندات) على معلومات هامة عن حقوقك الخاصة بتعويضات البطالة، ومسؤولياتك وأثر تخصصاتك، وأذلك فمن المهم جداً أن تفهم البيانات الواردة في هذا المستند.
على الفور: إذا كنت بحاجة إلى مساعدة اتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقيتها."

Bengali

“ওরুদ্বপূর্ণ এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে ওরুদ্বপূর্ণ সূচনা দেওয়া আছে। এটা ওরুদ্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নেবেন।
অবিলম্বেঃ আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।”

Spanish

¡IMPORTANTE! Este documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento.

INMEDIATAMENTE: Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 1-866-500-0017.

Mandarin

重要提示！这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即：如果需要，请拨打1-866-500-0017，可获得帮助，以帮助您翻译和理解所收到的文件中的信息。

Albanian

1. “**E RËNDËSISHME!** Ky dokument (dokumente) përmban informacion të rëndësishëm mbi të drejtat, përgjegjësitë dhe/ose përfitimet tuaja nga kompensimi i papunësisë. Është shumë e rëndësishme që ta kuptoni informacionin në këtë dokument.
2. **MENJËHERË:**Nëse është e nevojshme, telefononi në numrin 1-866-500-0017 për t’ju ndihmuar me përkthimin dhe kuptimin e informacionit të dokumentin (dokumenteve) që keni marrë.”

REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Unemployment Insurance Appeals Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and RECEIVED by the Michigan Office of Administrative Hearings and Rules (MOAHR) at **611 West Ottawa, 2nd Floor, Lansing, MI 48933** or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MOAHR, and an appeal to the Commission is not submitted, the hearing decision becomes final.

If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.

APPEAL TO THE UNEMPLOYMENT INSURANCE APPEALS COMMISSION

The Unemployment Insurance Appeals Commission (Commission) consists of up to seven members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (**P.O. Box 30475, Lansing, MI 48909-7975**), facsimile transmission (**517.241.7326**), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf.

BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. **The stipulation must be mailed to the Michigan Office of Administrative Hearings and Rules, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202.** Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party filing the appeal.