

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN UNEMPLOYMENT INSURANCE APPEALS COMMISSION

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In the matter of the Claim of:

**Christine M. Holifield,**  
Claimant-Appellant,

Appeal. No. 20-024143

Case No. 24375735

v.

ALJ: Lindsay Wilson

**Michigan Unemployment Insurance  
Agency,**  
Agency-Appellee.

Claimant SSN: 

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**MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF  
CLAIMANT-APPELLANT CHRISTINE HOLIFIELD**

The National Employment Law Project (“NELP”) asks the Unemployment Insurance Appeals Commission, pursuant to Mich. Admin. R. 792.11423(8), for leave to file a brief as amicus curiae in support of the Claimant-Appellant’s argument in favor of granting PUA benefits to part-time workers. In support of its motion, NELP states the following:

1. The National Employment Law Project (NELP) is non-profit law, policy and research organization that has advocated for the employment rights of workers paid low wages and unemployed workers for 50 years.

2. NELP works in partnership with community-based and national advocacy organizations, labor unions, academic institutions, policy makers and government agencies at all levels to ensure a robust safety net and access to job protections for all.
3. NELP is a national expert on unemployment insurance systems, and its Social Insurance team seeks ensure access to unemployment insurance programs by better tailoring them to the realities of workers in today's economy. The project is also working to create more equitable UI systems by promoting reforms that help workers balance work and family needs, and expanding access to the system for the growing numbers of low-wage, part-time and temporary workers.
4. NELP submits this proposed Amicus Curiae Brief along with this motion.

### **RELIEF REQUESTED**

WHEREFORE, the National Employment Law Project asks this Commission to grant its motion and allow it to file the proposed Amicus Curiae Brief in Support of Claimant-Appellant's Application for Leave.

Respectfully submitted,

*/s/ Rachael Kohl*

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**AMICI CURIAE BRIEF IN SUPPORT OF  
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## QUESTION PRESENTED

The federal Pandemic Unemployment Assistance (“PUA”) program provides unemployment assistance for workers who are ineligible for other assistance, including state unemployment insurance benefits. Congress expressly outlined its intent that PUA cover a worker who “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.”<sup>1</sup> Should part-time workers in Michigan be able to receive unemployment assistance under the PUA program?

Claimant-Appellant’s Answer: Yes.

Agency-Appellee’s Answer: No.

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<sup>1</sup> 15 U.S.C. § 9021(a)(3)(A)(ii)(II).

## **STATEMENT OF INTEREST**

The National Employment Law Project (“NELP”) is a non-profit law, policy, and research organization that has advocated for the employment rights of both unemployed workers and workers paid low wages for 50 years. NELP works in partnership with community-based and national advocacy organizations, labor unions, academic institutions, policy makers and government agencies at all levels to ensure a robust safety net and access to job protections for all. NELP is a national expert on unemployment insurance systems, and its Social Insurance team seeks to ensure access to unemployment insurance programs by better tailoring them to the realities of workers in today’s economy. The project is also working to create more equitable unemployment insurance (“UI”) systems by promoting reforms that help workers balance work and family needs and expanding access to those system for the growing numbers of low-wage, part-time and temporary workers. NELP has testified on UI programs in the U.S. Congress and nearly all 50 states before legislatures, appeared in the U.S. Supreme Court, federal courts of appeal and state courts on priority issues of NELP’s program, and continues to advise state legislatures and federal and state agencies on UI practices. A decision adverse to the claimant Ms. Holifield in this case would impact NELP’s goals and the constituencies with whom we work.

## INTRODUCTION

The federal Coronavirus, Aid, Relief, and Economic Security (“CARES”) Act established the Pandemic Unemployment Assistance (“PUA”) to render aid to workers as a last resort economic safety net. 15 U.S.C. § 9021 (2020). PUA provides economic relief for workers ineligible for regular state UI benefits. This group of workers includes part-time workers in Michigan like the claimant-appellant Ms. Holifield.

The Commission’s decision in this case will have a significant impact on part-time workers throughout Michigan who have faced economic hardship as a result of the pandemic. While other states have welcomed federal PUA dollars for part-time workers into their economies, the state of Michigan is leaving millions of federal dollars on the table by unnecessarily denying part-time workers access to the federal relief program. Finding for Ms. Holifield and other part-time workers puts Michigan in line with the rest of the country.

Moreover, Ms. Holifield was a worker affected by the pandemic who has a disability that may prevent her from working full-time. Denying her benefits on the ground that she receives social security disability insurance (“SSDI”) amounts to disability discrimination. While denying any part-time worker PUA benefits runs counter to a proper interpretation of the CARES Act and the purpose of the program, denying benefits to workers with disabilities because of their disabilities presents a violation of civil rights law.

For these reasons, the Commission should reverse the Administrative Law Judge’s decision and hold that Section 28(1)(c) of the Michigan Employment Security Act (“MESA”) does not render workers who are unable or unavailable to work full-time and have lost part-time employment due to the pandemic ineligible for PUA benefits.

## **STATEMENT OF FACTS**

Prior to the COVID-19 pandemic, claimant-appellant Christine Holifield was a self-employed independent contractor and business owner in the auction house industry. Due to a health condition, Ms. Holifield receives SSDI, was able to work, and was working part-time. When the economy shut down last spring because of public health restrictions, Ms. Holifield lost the income from her auction house job and filed a claim for PUA.

Initially, the Unemployment Insurance Agency (the “Agency”) issued a determination finding Ms. Holifield eligible for PUA benefit; like many Michiganders, she had lost her job due to the pandemic and qualified for PUA because she did not otherwise qualify for UI benefits. Several months later, however, the Agency issued a redetermination finding that Ms. Holifield was ineligible for PUA under the MESA because she was unable to work full-time. An ALJ ruled that although Ms. Holifield had lost her job due to the pandemic, she was ineligible for PUA for the reasons cited in the Agency’s redetermination. In her decision, the ALJ did not consider the text and purpose of the PUA program.

## **STANDARD OF REVIEW**

The Commission has broad authority to hear cases appealed from ALJ hearings. Under state law, the Commission is vested with the broad authority to “affirm, modify, set aside, or reverse the findings of fact and decision of the administrative law judge or a denial by the administrative law judge of a motion for rehearing or reopening.” MCL 421.34(2). In other words, the Commission has independent authority and discretion to reconsider cases appealed to it within 30 days, and a year if it finds good cause for doing so.

## ARGUMENT

The Commission should overrule the ALJ's decision in Ms. Holifield's case. The CARES Act authorizes part-time workers to receive PUA benefits, and the ALJ's improperly interpreted applicable state law narrowly, undermining its very purpose of providing broad coverage as a last resort for unemployed workers. Moreover, denying Ms. Holifield PUA benefits amounts to discrimination under the Americans with Disabilities Act ("ADA"). Finally, granting these benefits to part-time workers is both the proper under the law and is also consistent with the goal of the UI programs—providing an economic stabilizer by bringing much-needed federal funding into the state. Indeed, given that funding for the PUA program derives from entirely federal sources, it would drain no resources from the state's UI resources nor would it affect the employers involved. A ruling against Ms. Holifield and preventing part-time workers from receiving PUA benefits would preclude Michigan from receiving federal funds that other states are actively benefiting from because those states have not interpreted the CARES Act to conflict with applicable state law. Similar to those states, Michigan can—and should—interpret applicable state law in concert with the CARES Act to liberally afford benefits under the PUA program, which provides a benefit of last resort to unemployed workers across the country.

### **I. The CARES Act Clearly and Unambiguously Provides for Eligible Part-Time Workers to Receive PUA Benefits.**

The plain language of the CARES Act and the DOL guidance interpreting it highlight that eligible part-time workers may receive PUA benefits. Congress created the PUA program as part of the CARES Act. *See* 15 U.S.C. § 9021. The PUA program is administered by state agencies such as the Michigan Unemployment Insurance Agency through agreements between the Department of Labor (DOL) and the states. 15 U.S.C. § 9021(f). The plain text of the CARES Act and DOL guidance interpreting the statute allow eligible part-time workers to

receive benefits through the PUA program. Therefore, the Commission should direct the Agency to disburse PUA benefits to eligible part-time workers. Such a decision by the Commission would be consistent with the plain text of the Act and the intent of Congress, and it would not burden the state's unemployment insurance fund since PUA is a federally funded program.

**A. The CARES Act's Plain Language Grants Coverage for Michiganders Who are Otherwise Ineligible, Including Part-Time Workers.**

The text outlining the PUA program is straightforward. Under the Act, the Secretary of Labor shall provide PUA benefits “to any covered individual” for the weeks in which “the individual is not entitled to any other unemployment compensation.” 15 U.S.C. § 9021(b). The Act defines a “covered individual” as an individual who “is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation.” 15 U.S.C. § 9021(a)(3). Such individuals must self-certify that they are “otherwise able to work and available for work within the meaning of applicable state law except the individual is unemployed, partially employed, or unable to work” due to one of several reasons related to the COVID-19 pandemic.<sup>2</sup> If a Michigander certifies that she would be able

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<sup>2</sup> The CARES Act lists several pandemic related reasons that may render an individual unable to work. These include: (1) being diagnosed with COVID or experiencing COVID-19 symptoms and seeking medical diagnosis; (2) having a member of an individual's household diagnosed with COVID-19; (3) providing care for a family member or household member who has been diagnosed with COVID-19; (4) childcare responsibilities that result when an individual's child is not able to attend school because the school is closed due to COVID-19; (5) the individual is unable to reach their place of employment because a COVID-19 related quarantine has been imposed; (6) the individual has been advised by a medical provider to self-quarantine and is unable to reach their place of employment; (7) the individual was scheduled to commence work but does not have a job or is unable to reach their job as a direct result of the COVID-19 pandemic; (8) the individual has become the major breadwinner or major support for a household because the head of household died due to COVID-19; (9) the individual has had to quit his or her job as a direct result of COVID-19; (10) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or (11) the individual meets any additional criteria established by the Secretary of Labor for unemployment assistance. 15 U.S.C. §§ 9021(a)(3)(A)(ii)(I)(aa)-(kk).

and available for work if it were not for COVID-19 and she is not eligible for state UI benefits, she *is* covered by PUA and eligible for federal funds.

Moreover, the text of the Act unambiguously includes individuals seeking part-time workers as eligible for PUA benefits. A “covered individual” is also one who, in addition to having lost their job for one of the enumerated pandemic-related reasons, “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.” 15 U.S.C. § 9021(a)(3)(A)(ii)(II) (emphasis added). Again, if a Michigander like Ms. Holifield certifies that she is self-employed or seeking part-time employment and that Michigander is not eligible for state UI benefits, she *is* covered by PUA and able to recover federal funds. In other words, Congress passed the CARES Act with individuals like Ms. Holifield in mind.

Through its capacious language, the CARES Act thus affords PUA benefits to a number of individuals who would otherwise slip through the cracks of the UI system. Specifically, PUA fills the gaps created by state UI eligibility requirements by including individuals who are seeking part-time work, are self-employed, and those who are otherwise ineligible for state UI, so long as they have suffered job loss due to the listed pandemic-related reasons. Through the text of the CARES Act, Congress made its intent clear that individuals should be eligible for PUA benefits if they are otherwise ineligible for unemployment benefits. “PUA is benefit of last resort” for workers whose lives have been uprooted by the pandemic and who are otherwise ineligible for UI.<sup>3</sup> Part-time workers like Ms. Holifield who do not qualify for state UI under the

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<sup>3</sup> Dep’t of Lab., Unemployment Insurance Program Letter No. 16-20, Change 5 (UIPL No. 16-20, Change 5), Feb. 25, 2021, 2, <[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20\\_Change\\_5.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20_Change_5.pdf)> (Appendix A).

MESA are exactly the kinds of individuals whom Congress intended the PUA program to benefit.

**B. The DOL’s Guidance Shows that Part-Time Workers are Eligible for PUA.**

Under the CARES Act, the Secretary of Labor has authority to issue operating instructions and other guidance needed to effectuate the Act. 15 U.S.C. § 9032. DOL has issued several Unemployment Insurance Program Letters (“UIPL”) instructing states on how to implement the PUA program. The DOL’s guidance affirms that individuals who are ineligible for regular unemployment, including part-time workers, are eligible for benefits through the PUA program.

In its UIPLs, DOL affirms that individuals seeking part-time work who are ineligible for regular state UI benefits are indeed eligible for PUA benefits. In fact, DOL elucidates that “[t]he CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways.”<sup>4</sup> Early in its administration of the CARES Act, DOL offered state agencies guidance that part-time workers are eligible for PUA benefits. “To be eligible for PUA, the state must determine that the individual is not eligible for regular UC, PEUC, or EB... **This includes an individual who is ... seeking part-time employment,**” DOL advised.<sup>5</sup> On April 5, 2020, the DOL affirmed its previous guidance that the Act was designed to provide assistance to individuals who are “self-employed, those seeking part-time employment, individuals lacking sufficient work history, and those who otherwise do not qualify for regular unemployment compensation or extended benefits under state or Federal law.”<sup>6</sup> Indeed, PUA’s coverage is

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<sup>4</sup> Dep’t of Lab., Unemployment Insurance Program Letter No. 16-20 (UIPL No. 16-20), April 5, 2020, 1-2, <[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_16-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf)> (Appendix B).

<sup>5</sup> UIPL No. 16-20, Change 5, Feb. 25, 2021, at I-1 (emphasis added) (Appendix A).

<sup>6</sup> UIPL No. 16-20, April 5, 2020, at 2 (Appendix B).



intentionally broad, including clergy, gig-workers, and even those who have the ability to telework.<sup>7</sup> Thus, the program is intended to serve not only those who are unable to receive other forms of unemployment benefits under state or federal law, but it was also enacted with part-time workers in mind.

Moreover, even before the CARES Act passed, the DOL explicitly told states to be flexible with its able and available provisions given the impact of the pandemic. On March 12, 2020, the DOL issued guidance regarding workers being able and available to work that plainly states that “states have significant flexibility in implementing these requirements, as well as in determining the type of work that may be suitable given the individual’s circumstances.”<sup>8</sup> This guidance indicates that the DOL expects state agencies to exercise flexibility with their own requirements to accommodate workers in light of the pandemic, and construe those requirements so as to provide as broad coverage as possible. Of course, this guidance came before Congress had even passed the CARES Act; when it did so, Congress indicated that it too expected state agencies to exercise this flexibility to align with the Act’s purpose of providing economic stability to communities affected by the pandemic. The Agency acted improperly by failing to exercise this flexibility in Ms. Holifield’s case.

Finally, interpretation of the CARES Act to liberally afford benefits has been consistent across administrations. In an early Executive Order, President Biden encouraged agencies to “prioritize actions that provide the greatest relief to individuals, families, and small businesses.”<sup>9</sup> Indeed, Michigan precedent similarly instruct courts to liberally construe provisions of the

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<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> Dep’t of Labor, Unemployment Insurance Program Letter No. 10-20, Mar. 12, 2020, at 1, <[https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_10-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf)> (Appendix C).

<sup>9</sup> Exec. Order No. 14002, 86 Fed. Reg. 7229 (Jan. 22, 2021), <<https://www.govinfo.gov/content/pkg/FR-2021-01-27/pdf/2021-01923.pdf>> (Appendix D).

MESA affording benefits and narrowly construe disqualification provisions to give effect to its remedial purpose. *Tomei v. Gen Motors Corp.*, 194 Mich. App. 180 (1992) (holding that the purpose of the Act is to ameliorate the damaging effects of involuntary unemployment); *Empire Iron Mining P'ship v. Orhanen*, 211 Mich. App. 130 (1995) (holding that MESA “is entitled to liberal interpretation to give effect to its remedial policy”); *Korzowski v. Pollack Industries*, 213 Mich. App. 223 (1995) (finding that while MESA should generally be liberally construed, disqualification provisions should be narrowly construed); *Bureau of Worker's & Unemployment Comp. v. Detroit Med. Ctr.*, 267 Mich. App. 500 (2005) (holding MESA should be liberally construed to afford coverage and strictly construed to effect disqualification). Similar to the MESA, the CARES Act is a remedial statute intended to provide benefits to individuals suffering economic insecurity. Michigan can—and should—act in compliance with this order, DOL guidance, and the text of the CARES Act to liberally afford PUA benefits to part-time workers who have lost their jobs due to the COVID-19 pandemic.

## **II. Michigan Law Does Not Prevent Workers Who Are Unable to Work Full-Time From Receiving Benefits Pursuant to the PUA Program.**

Michigan law provides that workers must be “able and available . . . to perform suitable full-time work” to be eligible to receive unemployment benefits. MCL 421.28(1)(c). However, this requirement does not bar workers who do not meet this state eligibility criteria from receiving unemployment benefits through the PUA program. Rather, that a worker is ineligible for benefits under a state provision is a reason that they would be eligible for PUA benefits if they self-certify to one of the enumerated COVID-related reasons.

In finding that Michigan law disqualifies Ms. Holifield from receiving PUA benefits, the ALJ interpreted the language of the CARES Act in an improper and overly restrictive manner. The ALJ found that Ms. Holifield’s ineligibility for benefits under state law barred her from

receiving PUA benefits. Claimant's Exhibit 1 at 5. This interpretation of the CARES Act is improper and defeats the purpose of the statute.

A state's able and available provisions are not applicable when a claimant is unable and unavailable for specific reasons stated in the CARES Act. The PUA statute requires that an individual is "otherwise able to work and available for work within the meaning of *applicable* State law" (emphasis added). 15 U.S.C. § 9021(a)(3)(A)(ii). The statute then enumerates the pandemic-related reasons, including the closure of a place of employment triggering eligibility for PUA benefits. *Id.* The statute specifically includes eligibility for workers who are "seeking part-time employment." *Id.* If a claimant is unable and unavailable to work because of any one of these listed reasons, the state's able and available provisions are preempted and not applicable to the claimant's eligibility status. Thus, a claimant like Ms. Holifield is eligible for PUA benefits and applying the state's able and available provisions to these claimants is a violation of the express language of the CARES Act.

The State of Michigan itself recognizes that the circumstances of the pandemic warrant flexibility. In an executive order, Governor Whitmer temporarily suspended strict compliance with the able and available provision in section 28 of the Michigan Employment Security Act under the reasoning that "suitable work is unavailable because of COVID-19, which satisfies the requirements of section 28 for all claimants."<sup>10</sup> Moreover, the Unemployment Insurance Agency's guidance as to suitable work states that the law considers an "employee's physical

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<sup>10</sup> Mich. Exec. Order No. 2020-24 (March 26, 2020) <<https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-24.pdf>> (Appendix E).

fitness for the job” and the “degree of risk to the employee’s health, safety and morals” in determining whether full-time or part-time work is suitable.<sup>11</sup>

DOL makes clear that other types of workers who are traditionally ineligible for unemployment benefits under state law are eligible for PUA benefits. Indeed, that is the purpose of the program. Michigan has interpreted the CARES Act to make PUA benefits available to other classes of applicants who are typically ineligible for benefits under state law. For example, the Michigan Department of Labor and Economic Opportunity issued guidance indicating that individuals who are full-time student—and therefore excluded from receiving benefits on a state claim—are eligible to file for PUA.<sup>12</sup>

Other jurisdictions similarly considering PUA eligibility have interpreted the CARES Act to make benefits available to those who are ineligible for state unemployment benefits under state law. Maine issued guidance indicating that a full-time student “who works a few hours a week in a part-time job and becomes unemployed, partially unemployed, or unable to work as a direct result of COVID-19 may be eligible for unemployment under the federal PUA program.”<sup>13</sup> High school students with part-time employment in Minnesota are similarly eligible for PUA benefits. *In re Muse*, 956 N.W.2d 1 (Minn. Ct. App. 2021) (Appendix H). The PUA program is

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<sup>11</sup> MICH. DEP’T OF LAB. AND ECON. OPPORTUNITY, *Fact Sheet 145c - COVID-19 Unemployment Benefits - What is Suitable Work?*, <[https://www.michigan.gov/documents/uia/145\\_-\\_What\\_is\\_Suitable\\_Work\\_379859\\_7.pdf](https://www.michigan.gov/documents/uia/145_-_What_is_Suitable_Work_379859_7.pdf)> (Appendix F).

<sup>12</sup> MICH. DEP’T LAB. ECON. OPPORTUNITY, *Is there a certain age to qualify for unemployment benefits?*, [https://www.michigan.gov/leo/0,5863,7-336-94422\\_97241\\_98585\\_98650-527668--,00.html#:~:text=There%20is%20not%20minimum%20age%20to%20file%20for%20unemployment%20benefits.](https://www.michigan.gov/leo/0,5863,7-336-94422_97241_98585_98650-527668--,00.html#:~:text=There%20is%20not%20minimum%20age%20to%20file%20for%20unemployment%20benefits.)

<sup>13</sup> ME. DEP’T LAB., *Information for Individuals Filing for PUA*, 5, <https://www.maine.gov/unemployment/docs/2020/pua2020/faq/english.pdf> (last visited Mar. 18, 2021) (Appendix G).

intentionally broad, flexible, and designed to support a variety of workers through the ongoing economic crisis.

Finally, Michigan law cannot be read to disqualify workers who are unable or unavailable to work full-time because such an interpretation is inconsistent with the purpose of the PUA program, which is to provide economic benefits to those who have been affected by COVID-19 and who are otherwise ineligible for other forms of unemployment assistance. The language of the Act favors eligibility for workers who have lost part-time employment due to the COVID-19 pandemic. In deciding a PUA eligibility case regarding a high school student who lost her part-time position due to the pandemic, the Court of Appeals of Minnesota stated: “If the very thing that makes the person eligible for PUA benefits is treated as a disqualification, no one would be eligible for PUA benefits.” *In re Muse*, 956 N.W.2d at \*6 (Appendix H). The CARES Act outlines the COVID-related reasons why a worker may be unable or unavailable to work for purposes of PUA. Therefore, the language from the PUA statute is the applicable able and available provision relevant to the inquiry as to whether a part-time worker is eligible for PUA benefits, not state law. It is clear that the federal government, in designing the PUA program, intended to provide a safety net for all workers whose employment was affected by the pandemic regardless of their status or designation as an employee.

Affirming the ALJ’s decision would expressly contradict the purpose of the federal statute. Ms. Holifield, who is ineligible for state unemployment benefits, is a covered individual under the PUA program and therefore she and thousands of Michigan citizens like her should not be categorically excluded from this form of pandemic unemployment assistance.

### **III. Prohibiting Part-Time Workers with Disabilities from Receiving PUA Benefits Is Disability Discrimination.**

Ms. Holifield is unable to work full-time due to her health condition. She receives SSDI and lost her part-time position due to the pandemic. Part-time employment is the extent to which Ms. Holifield can participate in the labor market due to her chronic disabilities. To hold Ms. Holifield and other workers like her to a full-time employment standard in determining eligibility for public benefits is discriminatory. This discriminatory standard is even more salient in the context of a benefits program designed for broad eligibility to support all workers affected by the pandemic. Moreover, the PUA program does not include a threshold question about whether a worker has a disability; the purpose of the CARES Act is, in part, to provide PUA benefits to part-time workers who have lost work due to COVID-19.

Under Title II of the Americans with Disabilities Act (“ADA”), “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. The ADA defines disability, in part, as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102(1)(A). Working is an enumerated “major life activity.” *Id.* Ms. Holifield’s physical impairments are sufficiently severe and long-lasting for her to receive SSDI and thus are substantially limiting. Receipt of SSDI benefits does not preclude an individual from pursuing an ADA claim: “Neither application for nor receipt of social security disability benefits is by itself conclusive evidence that an individual is completely incapable of working.” *Demyanovich v. Cadon Plating & Coatings, LLC*, 747 F.3d 419, 429 (6th Cir., 2014). Further, individuals can work while receiving SSDI so long as they meet income requirements or

participate in certain work incentive programs through the Social Security Administration.<sup>14</sup> As her health condition directly limits her ability to work full-time, Ms. Holifield is an individual with a disability.

The Michigan Unemployment Insurance Agency is a public entity for the purpose of the ADA. A public entity includes any “state or local government body or any instrumentality thereof.” 42 U.S.C. § 12131(1). The provision of benefits to claimants falls within Title II’s definition of “services, programs, or activities.” The Sixth Circuit has interpreted the ADA broadly, finding that this provision “encompass[es] virtually everything that a public entity does.” *Babcock v. Michigan*, 812 F.3d 531, 540 (6th Cir. 2016).

The ADA requires public entities to provide reasonable accommodations to individuals with disabilities to enable participation in an entity’s programs. *Yaldo v. Wayne State Univ.*, 266 F.Supp.3d 988, 1010 (E.D. Mich. 2017). The Agency has refused to adapt its able and available provision to accommodate the circumstances of part-time workers with disabilities. But for Ms. Holifield’s disabilities, she would be able to work full-time. If she were able and available to work full-time, she would be receiving PUA benefits. But because of her health conditions she is not. However, she is able and available to work fully to the extent that her disabilities allow. The Agency’s denial of PUA benefits to part-time workers receiving SSDI on the basis of their inability to work full-time is both a misapplication of state law to PUA eligibility and discrimination on the basis of disability.

Further, the Agency cannot raise an acceptable fundamental alteration defense in this case. Under the ADA, a fundamental alteration defense is appropriate if a requested reasonable

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<sup>14</sup> SOCIAL SECURITY ADMINISTRATION, *Work Incentives - General Information*, <https://www.ssa.gov/disabilityresearch/wi/generalinfo.html>.

accommodation would fundamentally alter the essential nature of a program. It is the public entity's burden to establish that the requested relief would fundamentally alter its program. Ms. Holifield makes no request for relief that would present a fundamental alteration of the PUA program. She is not asking for any changes to the program, she is simply asking that she not be denied benefits because of her disabilities. The legitimate purpose of the PUA program is to provide public benefits to workers who have lost employment for COVID-related reasons. There is no threshold question about whether or not a worker has a disability. In providing PUA benefits to Ms. Holifield and workers like her, the state is not being asked to pay more to administer the funds already going to other states for the same type of workers or change the basis of the program at all. The CARES Act specifically names part-time workers as intended recipients of PUA benefits and distributing benefits to part-time workers with disabilities does not alter the essential nature of a program that has the express purpose of providing benefits to workers like Ms. Holifield.

While some part-time workers can certify with the Agency that they are able and available to work full-time even if they are currently employed in a part-time role, Ms. Holifield, and many other workers with disabilities, are unable to work full-time due to their disabilities. So, under the Agency's reasoning, a worker without a disability who loses part-time work due to the pandemic but who is able to work full-time can receive PUA benefits but a worker with a disability who similarly loses part-time work due to the pandemic but who can only work part-time cannot. In practice, the Agency's argument would result in workers with disabilities being treated differently than their coworkers, similarly affected by the pandemic, who do not have disabilities. This is plainly discrimination on the basis of disability and counter to the purpose of the PUA program.



#### **IV. The Commission’s Decision on this Issue Will Have a Significant Impact on Michigan’s Part-Time Workers and Their Families**

Allowing Michiganders who have lost part-time work due to the pandemic to claim PUA benefits is both supported by law and also aligned with the purpose of the CARES Act to provide economic stabilizers for the economy and protect families affected by the pandemic. Congress passed PUA as an economic stabilizer for workers affected by the pandemic. PUA benefits fundamentally function to complement state UI benefits, which for years have successfully stabilized the economy when responsive to periods of economic downturn. As economic stabilizers, UI benefits and other similar programs have an enormous return on investment to the community. Indeed, economist Wayne Vroman found that during the Great Recession, one dollar in spending, whether on regular UI benefits or extended benefits, led to \$2 of economic growth.<sup>15</sup> Unemployment benefits stimulate the economy by allowing workers to maintain their spending throughout periods of involuntary joblessness.<sup>16</sup> Without such benefits, the hardship of unemployment falls not only on the family or individual but also on the local economy.<sup>17</sup>

Understanding these basic economic principles and hoping to help their citizens, other jurisdictions already allow part-time workers to receive UI benefits or have interpreted the

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<sup>15</sup> See Wayne Vroman, *The Role of Unemployment Insurance as an Automatic Stabilizer During a Recession*, THE URBAN INST. & IMPAQ INTERNATIONAL (July 2010), at iv, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP2010-10.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP2010-10.pdf) (accessed March 16, 2021) (Appendix I).

<sup>16</sup> See Peter Ganong & Pascal J. Noel, *Consumer Spending During Unemployment*, NAT’L BUREAU OF ECON. RES., Working Paper 25417 (January 2019) [https://www.nber.org/system/files/working\\_papers/w25417/w25417.pdf](https://www.nber.org/system/files/working_papers/w25417/w25417.pdf) (accessed March 16, 2021) (Appendix J).

<sup>17</sup> See Marco Di Maggio & Amir Kermani, *The Importance of Unemployment Insurance as an Automatic Stabilizer*, NAT’L BUREAU OF ECON. RES., Working Paper No. 22625 (September 2016) [https://www.nber.org/system/files/working\\_papers/w22625/w22625.pdf](https://www.nber.org/system/files/working_papers/w22625/w22625.pdf) (accessed March 16, 2021) (finding that more generous unemployment programs reduce harm from negative economic shocks to earnings growth and employment growth) (Appendix K).

CARES Act with proper flexibility in order to afford PUA benefits to those workers within their state. For example, even under normal circumstances in Maryland, individuals who work at least 20 hours a week are eligible for UI benefits.<sup>18</sup> Within the Great Lakes Region, Michigan is falling far behind other states. Unemployment benefits are generally available for part-time workers in Illinois.<sup>19</sup> And other jurisdictions, like Wisconsin,<sup>20</sup> Ohio,<sup>21</sup> and Indiana,<sup>22</sup> state agencies have aligned their interpretations PUA eligibility with the plain language of the CARES Act and DOL guidance so as to permit part-time workers, including students who work part-time, to receive PUA benefits. Michigan's failure to follow suit forfeits millions of dollars that Congress intended to help stabilize the state's economy.

While other states have read their statutes as permitting coverage of part-time workers, and thereby accepting federal funding, Michigan is leaving this needed support on the table. The

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<sup>18</sup> MD. DEP'T OF LAB., UNEMPLOYMENT INSURANCE IN MARYLAND: A GUIDE TO REEMPLOYMENT, 30 (2020)

<https://www.dllr.state.md.us/employment/clmtguide/uiclmtmpamphlet.pdf> (last visited April 18, 2021) (Appendix L). Since the onset of the COVID-19 pandemic, part-time workers in Maryland are not required to demonstrate ability and availability to work until 30 days after public health mandates have been lifted.

<sup>19</sup> ILL. DEP'T OF EMP. SECURITY, UNEMPLOYMENT INSURANCE BENEFITS HANDBOOK, 17 (2017), <https://www2.illinois.gov/ides/IDES%20Forms%20and%20Publications/CLI105L.pdf> (last visited April 18, 2021) (Appendix M).

<sup>20</sup> WISC. DEP'T OF WORKFORCE DEV., *Unemployment COVID-19 Public Information*, <<https://dwd.wisconsin.gov/covid19/public/ui.htm>> (stating that individuals who are attending school full-time and available for part-time work may be eligible for PUA benefits if they are unemployed for the pandemic-related reasons outlined in the CARES Act).

<sup>21</sup> Jessie Balmert, *Coronavirus in Ohio: Self-employed, part-time workers can now apply for unemployment*, CINCINNATI ENQUIRER (May 13, 2020), <https://www.cincinnati.com/story/news/2020/05/13/coronavirus-ohio-self-employed-part-time-workers-can-now-apply-unemployment/5183281002/> (Appendix N).

<sup>22</sup> IND. UNEMPLOYMENT INS., *Claimant Frequently Asked Questions for COVID-19 Work-Related Issues*, Section B – Pandemic Unemployment Assistance (2021), [https://www.in.gov/dwd/files/Indiana\\_Unemployment\\_FAQ.pdf](https://www.in.gov/dwd/files/Indiana_Unemployment_FAQ.pdf) (“PUA is a temporary federal unemployment insurance program for individuals not otherwise eligible for UI benefits, **including** the self-employed, **those seeking part-time employment**, individuals lacking sufficient work history”) (emphasis added) (Appendix O).

very purpose of the CARES Act was thus to stabilize communities affected by the COVID-19 by providing a rush of federal funding to stimulate local economies. The interpretation of the CARES Act that the Agency-Appellee has is unsupported by the plain language of the statute and DOL guidance. *See supra* Part I. And it is baffling that the state has adopted this position—taking a contrary position would do no harm to the state’s public fisc, granted that PUA benefits are supported by entirely federal sources. Any de minimis strain on the Agency’s day-to-day operations is heavily outweighed by the return on investment in Michigan’s economy. The Agency’s position is harmful to Michiganders where it need not be.

The Agency’s position is especially perplexing given how hard the COVID-19 pandemic hit Michigan. In April of 2020, Michigan experienced a 22.8 percent drop in employment, suffering greater job loss than any state in the pandemic-ravaged northeast.<sup>23</sup> According to Gabriel Erlich, the director of the Research Seminar in Quantitative Economics at the University of Michigan, it’s typical “that when unemployment starts rising in the United States, unemployment in Michigan actually rises by more.”<sup>24</sup> Historically, this phenomenon is driven by the outsized role of manufacturing in the state’s economy. But when the COVID-19 pandemic resulted in shutdowns, the effects extended to additional sectors as well, including the state’s service sector, construction industry, retail business and tourism sectors.<sup>25</sup> These sectors of the economy increasingly rely on part-time employees to make up a significant portion of their

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<sup>23</sup> John C. Austin & Brad Hershbein, *Why Covid-19 Hit Michigan So Hard*, The Brookings Inst. Blog (2020), <<https://www.brookings.edu/blog/the-avenue/2020/06/04/why-covid-19-hit-michigan-so-hard/>> (last visited March 19, 2021).

<sup>24</sup> Byron Tau, *Why Coronavirus Hit Michigan’s Economy Harder, Longer*, THE WALL STREET JOURNAL (April 30, 2020), <<https://www.wsj.com/articles/why-coronavirus-hit-michigans-economy-harder-longer-11588248001>>.

<sup>25</sup> *Id.*

workforce.<sup>26</sup> Additionally, extending benefits to workers with disabilities who are only able to work part-time also recognizes the unique challenges that this population faces. Workers who are disabled due to being immunocompromised are doubly hard hit by the pandemic. They cannot enter the workforce due to their health conditions.

Extending PUA benefits to part-time workers, as envisioned by the CARES Act, recognizes the reality that many individuals work part-time, a growing portion of whom would prefer full-time employment.<sup>27</sup> It also recognizes the distinct link between the sectors that have the highest concentrations of part-time workers—retail trade, leisure and hospitality, and the restaurant industry—were also some of the hardest hit by the pandemic.<sup>28</sup> A decision by the Commission to permit part-time workers to collect PUA benefits would be a boon to both Michiganders trying to make ends meet as the pandemic continues and the state economy.

## CONCLUSION

For the reasons stated above, NELP respectfully requests that the Commission reverse the ALJ's decisions and hold that Section 28(1)(c) of the Michigan Employment Security Act does not render workers who are unable or unavailable to work full-time and have lost part-time employment due to the pandemic ineligible for PUA benefits.

Respectfully submitted,

/s/ Rachael Kohl

NATIONAL EMPLOYMENT LAW PROJECT  
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<sup>26</sup> LONNIE GOLDEN, ECON. POL'Y INST., *STILL FALLING SHORT ON HOURS AND PAY: PART-TIME WORK BECOMING NEW NORMAL* (2016), <<https://www.epi.org/publication/still-falling-short-on-hours-and-pay-part-time-work-becoming-new-normal/>>.

<sup>27</sup> *Id.*

<sup>28</sup> Christy Beiber, *Which Industries Are Being Hit Hardest by the Coronavirus Crisis?*, THE MOTLEY FOOL (Sept. 1, 2020), <<https://www.fool.com/the-ascent/personal-finance/articles/which-industries-are-being-hit-hardest-coronavirus-crisis/>>.

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MICHIGAN UNEMPLOYMENT INSURANCE APPEALS COMMISSION

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In the matter of the Claim of:

Appeal. No. 20-024143

**Christine M. Holifield,**  
Claimant-Appellant,

Case No. 24375735

ALJ: Lindsay Wilson

v.

Claimant SSN: XXXXXXXXXX

**Michigan Unemployment Insurance  
Agency,**  
Agency-Appellee.

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**PROOF OF SERVICE**

Pursuant to Mich. Admin Code R. 792.10110(1) and (6), I certify that a copy of the foregoing Motion for Leave to File Amici Curiae Brief in Support of Claimant-Appellant Christine Holifield and Amici Curiae Brief in Support of Claimant-Appellant Christine Holifield were served via email on the Unemployment Insurance Appeals Commission and via first-class mail on Christine Holifield and the Unemployment Insurance Agency this April 19, 2021.

Dated: April 19, 2021

Respectfully submitted,  
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