

**STATE OF MICHIGAN
MICHIGAN UNEMPLOYMENT INSURANCE APPEALS COMMISSION**

IN THE MATTER OF:

INVOLVED CLAIMANT:
CHRISTINE M. HOLIFIELD
SSN: [REDACTED]

ALJ: LINDSAY WILSON

APPEAL DOCKET NO.
20-024143-262734W

UIA CASE NUMBER:
24375735

**MICHIGAN UNEMPLOYMENT INSURANCE AGENCY'S
WRITTEN ARGUMENT**

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Dated: March 3, 2021

TABLE OF CONTENTS

	<u>Page</u>
Index of Authorities	ii
Introduction	1
Facts and Procedural History	1
Argument	2
I. Claimants seeking PUA benefits must be able and available to perform full-time work, and Holifield does not meet these requirements.....	2
II. Holifield's arguments are do not support her eligibility for PUA benefits.	3
A. There is no conflict between the PUA eligibility criteria and Michigan's full-time ability and availability requirements.....	4
B. There is no authority supporting that SSDI beneficiaries are eligible for PUA benefits where they are not able or available to perform full-time work.	5
C. While part-time workers may be eligible for PUA benefits under some circumstances, they are still required to be able and available for full-time work.....	7
Conclusion and Relief Requested.....	10

INDEX OF AUTHORITIES

Page

Cases

<i>Muse v Dep’t of Employment & Economic Development</i> , Minn Ct of Appeals Case No. 39175517-6.....	8
<i>Mutual Pharmaceutical Co, Inc v Bartlett</i> , 570 US 472 (2013)	4
<i>Ross v AcrisurePI, LLC</i> , unpublished decision of the Michigan Court of Appeals, Docket No. 315347 (Decided Aug. 14, 2014)	6, 7

Statutes

CARES Act, Pub. L. 116–136, § 2102.....	1
CARES Act, Pub. L. 116–136, § 2102(a)(2).....	7
CARES Act, Pub. L. 116–136, § 2102(a)(2)(A)(ii)	2
CARES Act, Pub. L. 116–136, § 2102(a)(2)(A)(ii)(I)	3
CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(i)	2, 7
CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(ii)(I)	2, 9
CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(ii)(II)	4, 9
MCL 421.1.....	7
MCL 421.28(1)(c).....	1, 3, 4, 9
Minn Stat 268.085(4).....	8

INTRODUCTION

The Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act expanded the availability of unemployment benefits to workers who might be ineligible for traditional benefits by creating specialized Pandemic Unemployment Assistance (PUA) benefits. See CARES Act, Pub. L. 116–136, § 2102. To be eligible for PUA benefits, claimants must be able and available to perform full-time work as required by Michigan law. By her own admission, claimant Christine Holifield is not able and available to perform full-time work due to her disability status. For this reason, the ALJ properly concluded she was ineligible for PUA benefits.

FACTS AND PROCEDURAL HISTORY

Christine Holifield worked part-time making deliveries for an auction house. She was a self-employed contractor, and the auction house issued her a 1099 for this work. During the COVID-19 pandemic, the auction house was forced to close its doors, resulting in a loss of Holifield’s part-time work. When this occurred, Holifield filed a claim for PUA benefits. Holifield acknowledged she has medical restrictions and collects social security disability insurance (SSDI) benefits, and that her disability limits her to part-time work. Holifield’s testimony is not clear as to the nature of her work limitations.

The Unemployment Insurance Agency determined that Holifield was ineligible for benefits under Section 28(1)(c) of the Michigan Employment Security Act because she was not available to perform full-time work. Holifield appealed this decision to a hearing before an administrative law judge. In a decision issued

February 3, 2021, ALJ Lindsay Wilson affirmed Holifield’s disqualification.

(Agency Determination, Ex. A.) The ALJ reasoned that PUA claimants must be able and available for work as required by state law, and Holifield did not meet this requirement because Michigan law requires claimants to be able and available to perform full-time work. (ALJ Decision, Ex. B.)

Holifield appealed the ALJ’s decision to this Commission, which set a hearing and invited the parties to submit written argument. (MUIAC Order, Ex. C.)

ARGUMENT

I. Claimants seeking PUA benefits must be able and available to perform full-time work, and Holifield does not meet these requirements.

Section 2102 of the CARES Act defines who is a “covered” individual eligible to claim PUA benefits. A covered individual must meet two criteria:

- (1) They must not be eligible for regular unemployment compensation or extended benefits, including those who are “self-employed, seeking part-time employment, lacking sufficient work history, or who [are] otherwise not qualified for regular UC, EB, or PEUC.” UI Program Letter 16-20, Change 4, p. I-4 (attached as Ex. D); see also, CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(i). Self-employed individuals include independent contractors and gig workers. (Ex. D.)
- (2) They must self-certify that they are “*otherwise able and available to work within the meaning of applicable state law*,” except where they are unemployed or unable or unavailable to work because of a listed COVID-19-related reason detailed in Section 2102(a)(2)(A)(ii) of the CARES Act. *Id.* (emphasis added); see also, CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(ii)(I).

New applicants for PUA benefits must also submit documentation substantiating their previous employment or self-employment when filing a claim. (Ex. D, p. I-4.)

Program letter guidance issued to states by the Federal Department of Labor provides that the “terms and conditions of state law which apply to claims for regular compensation” also “apply to claims for PUA and payment thereof, except as provided in these instructions and any additional guidance issued regarding the PUA program.” (*Id.* at p. I-11.) The program letter guidance further states that “the expectation is that *states will continue to apply their able, available, and actively seeking work standards as outlined in state law.*” (*Id.* at I-7 (emphasis added).)

Michigan law requires all claimants for unemployment benefits to be able and available to perform suitable full-time work. MCL 421.28(1)(c). Those who are able and available to perform only part-time work are ineligible for unemployment benefits under this section. Holifield, by her own admission, is unable to perform full-time work and unavailable for full-time jobs due to her disability status; there is no evidence her full-time ability is limited by any of the COVID-19 reasons detailed in the CARES Act. By definition, she does not meet the definition of “covered individual” eligible for PUA benefits. See CARES Act, Pub. L. 116–136, § 2102(a)(2)(A)(ii)(I); Ex. D, p. I-4.) The ALJ made no error in so concluding.

II. Holifield’s arguments are do not support her eligibility for PUA benefits.

In her written argument, Holifield advances several arguments for why she believes she is eligible for PUA benefits. But these arguments do not raise any

actual conflicts between the PUA criteria and state law. She also relies on sources that does not address the issues and facts of her case.

A. There is no conflict between the PUA eligibility criteria and Michigan’s full-time ability and availability requirements.

Holifield argues that because the CARES Act allows claimants losing part-time employment to collect benefits, the state law provision requiring full-time ability and availability is inconsistent and must yield to the federal law. (Holifield Argument, pp. 3–5.) But there is no unreconcilable conflict in the statutory language. A true conflict which makes state law unenforceable exists where it “is impossible for a private party to comply with both state and federal law requirements.” *Mutual Pharmaceutical Co, Inc v Bartlett*, 570 US 472, 480 (2013). It is true that federal law allows certain part-time workers to collect PUA benefits, including those “seeking part time-employment.” CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(ii)(II); UI Program Letter 16–20, p. 2, I-3 (attached as Ex. E.) It is also true that Michigan law requires these claimants to be able and available for full-time work. MCL 421.28(1)(c). But there is no direct conflict because it is not impossible for a claimant to comply with both requirements. Seeking work and ability or availability to perform work are distinct concepts. A claimant can seek out part-time work *and* simultaneously be able and available to perform full-time work if it is offered to them. Because there is no unavoidable conflict, there is no basis for waiving the full-time ability and availability provision in state law.

Holifield points out that DOL guidance has allowed states “flexibility” to determine “what it means for that individual to be able, available, and seeking work, even when quarantined or otherwise affected by COVID-19.” (Written Argument, p. 4, quoting UI Program Letter 10-20, p. 3.) But this same letter is express that the requirements that claimants “be able to work, available for work, and actively seeking work . . . cannot be waived or exempted for individuals affected by COVID-19.” UI Program Letter 10-20, p. 2 (Ex. F.) The DOL did not require states to waive or amend requirements that a claimant be able to perform and available for full-time work. Instead, the DOL stated a “state *may* consider an individual available” where they have limits on their availability so long as they do not withdraw from the labor market, but it never required states to find an individual available for only part-time work be eligible for benefits. See generally, Ex. F, p. 3.) It is also notable that the DOL’s guidance was not directed to SSDI beneficiaries, but rather those directly impacted by quarantines or other COVID-19 specific circumstances not applicable here. (See *Id.* at pp. 4–5.)

B. There is no authority supporting that SSDI beneficiaries are eligible for PUA benefits where they are not able or available to perform full-time work.

Holifield also argues that federal guidance supports that SSDI beneficiaries in her situation are eligible for PUA benefits. (Written Argument, pp. 3, 5–7.) In support of this position, she cites to an assessment of the CARES Act legislation prepared by a congressional staffer. (Written Argument, pp. 3–4, citing COVID-19 Pandemic Unemployment Insurance Law, Guidance and FAQs, p. 14.) This

assessment opined that someone can receive SSDI benefits and unemployment benefits at the same time. *Id.* However, this guidance was explicit that such a worker “must be able to and available for work.” *Id.* The requirement that a worker be able to perform work as required by state law is not waived or altered by anything in this assessment, which itself is nonbinding.

Holifield also cites to an advice letter the DOL issued to the state of Wisconsin concerning an SSDI recipient. (*Id.*) But this letter does not address the issue in Holifield’s case. The DOL letter provides that recipients of SSDI benefits “may” be eligible for PUA benefits. (DOL letter, Ex. G.) However, the key advice the DOL provides is that an individual receiving SSDI benefits is ineligible for state benefits under Wisconsin state law, and thus they meet the PUA requirement of being ineligible for traditional unemployment benefits. (*Id.*) The only other issue addressed is whether a claimant’s SSDI benefits might offset any PUA benefit they could be eligible to receive. The DOL did *not* address the issue presented in Holifield’s case: whether and how a state’s full-time ability and availability requirements might impact such a claimant. (See *Id.*)

Michigan case law is instructive in illustrating that SSDI claimants may be eligible for unemployment under some circumstances, but not in Holifield’s case. The Michigan Court of Appeals addressed whether SSDI beneficiaries might be eligible for unemployment benefits in *Ross v AcrisureP1, LLC*, unpublished decision of the Michigan Court of Appeals, Docket No. 315347 (Decided Aug. 14, 2014) (attached as Ex. H). The claimant in *Ross* was approved for SSDI benefits based on

limits on his “functional capacity to perform a full range of work.” *Id.* at *1–2. Michigan does not have a provision in its unemployment statute prohibiting SSDI recipients from receiving traditional unemployment benefits like the Wisconsin statute analyzed by the DOL. (See Ex. G; MCL 421.1 *et seq.*) Consequently, the *Ross* court found that the claimant was eligible for unemployment benefits despite his receipt of SSDI benefits so long as he was able and capable of working some kind of suitable job full-time. *Ross, supra*, at *5. His disability did not eliminate all ability to perform suitable full-time work, and the claimant was willing to perform full-time work; thus, he met the eligibility requirements for traditional unemployment benefits. *Id.* The *Ross* case supports that (1) a claimant receiving SSDI benefits might be eligible for traditional unemployment benefits, which would make them ineligible for PUA benefits under CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(i), and (2) they must be able to perform some sort of full-time work to receive benefits. This case further supports that SSDI claimants who are not able and available to perform full-time work, like Holifield, are ineligible for PUA benefits.

C. While part-time workers may be eligible for PUA benefits under some circumstances, they are still required to be able and available for full-time work.

Holifield emphasizes that there are indications that some part-time workers who are traditionally unavailable for full-time work may still be eligible for PUA benefits. (Written Argument, p. 5.) To illustrate this point, she points to an example in a DOL program letter involving a full-time student who loses a part-

time job. (*Id.*, DOL Program Letter 16-20, Change 20, p. I-4, attached as Ex. H.) In that example, the DOL stated that this student “may” be eligible for PUA benefits. *Id.* However, the DOL based its statement on whether it was significant that the student may not have lost their “principal source of income,” not whether they were able or available to perform full-time work. *Id.* The DOL did not consider the issues central to this case.

Holifield also cites to a Minnesota case finding high school students may be eligible for PUA benefits. (See Written Argument, pp. 7–8, citing *Muse v Dep’t of Employment & Economic Development*, Minn Ct of Appeals Case No. 39175517-6, attached as Ex. I.) But *Muse* similarly did not discuss the issues in this case. Instead, the Minnesota Court focused on how the CARES Act’s definition of a covered individual interacted with a Minnesota statute making full-time high school students ineligible for unemployment benefits. (Ex. I, pp. 7–10.) The court did not discuss whether students needed to have full-time ability or availability. The only discussion of these requirements was to note that, unlike populations like prisoners, students were able and available to accept work. (*Id.* at p. 11.) Like the Wisconsin scenario above, the *Muse* decision did not address the central issue presented here. It is also notable that Minnesota’s availability law does not require a person be available for full-time work. Minn Stat 268.085(4) (attached as Ex. J). This difference in the applicable law makes *Muse* particularly inapplicable.

The Agency does not dispute there may be circumstances where individuals who lose part-time employment or who are seeking part-time employment are

eligible for PUA benefits. However, the CARES Act is clear these individuals must comply with state law ability and availability requirements, and Michigan law is clear they must be able and available to perform full-time work if it is offered. See CARES Act, Pub. L. 116–136, § 2102(a)(3)(A)(ii)(I), (II); MCL 421.28(1)(c). Holifield’s inability and unavailability for suitable full-time work disqualifies her from benefits.

CONCLUSION AND RELIEF REQUESTED

This Commission should affirm the ALJ's decision disqualifying Holifield from PUA benefits. While some part-time workers may be eligible for PUA benefits, the statutory language is clear they must still be able and available for work as required by state law. Michigan law requires claimants to be able and available for full-time work, thus, PUA claimants must meet this requirement to be eligible for PUA benefits. There is no dispute that Holifield is only able to perform part-time work and is not available for full-time work offered to her. She is, therefore, ineligible for PUA benefits, and the ALJ correctly affirmed this conclusion. The Agency respectfully asks that this Commission to deny Holifield's appeal and affirm the ALJ's decision finding her ineligible for PUA benefits.

Respectfully submitted,

Dana Nessel
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P.O. Box 30736
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(517) 335-1950

Dated: March 3, 2021

PROOF OF SERVICE

The undersigned certifies that on March 3, 2021, a copy of the above document was served on counsel for Appellant, David M. Blanchard via email at blanchard@bwlawonline.com.

Dated: March 3, 2021



Judie K. Bridleman
Legal Secretary



EXHIBIT A

CHRISTINE MARIE HOLIFIELD
[REDACTED]

Mail Date: November 13, 2020
Letter ID: L0080441970
CLM: C73232780
Name: CHRISTINE HOLIFIELD

Notice of Redetermination

Case Number: 0-024-375-736 BYB: March 22, 2020
Claimant: CHRISTINE M HOLIFIELD Claimant SSN: [REDACTED]

Issue: Availability Section of the Act: 28(1)(c)

Issues and Sections of Michigan Employment Security (MES) Act involved: Availability and 28(1)(c). You protested a determination issued on October 16, 2020 regarding Self Employed holding you ineligible for benefits. Your availability for work is in question due to self-employment.

No new or additional evidence has been provided to warrant a reversal in the prior determination. Therefore, the previous determination is affirmed. You are not willing to arrange your business hours to seek work or accept interviews. You are not attached to the labor market while you are not available for full-time work.

You are ineligible for benefits under MES Act, Sec. 28(1)(c) beginning March 22, 2020 and continuing until this condition no longer exists. You will not receive benefit payments during this period.

If applicable, principal and penalty amounts are shown on Form UIA 1301, Weeks of Overpayments. If you disagree with this Redetermination, refer to "Appeal Rights" on the reverse side of this form. The appeal must be received no later than 12/14/2020.

UIA is an Equal Opportunity Employer/Program.

Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.



Penalties

It is against state law to intentionally make false statements or conceal material information to gain or avoid the payment of benefits. You may have to repay up to 1.5 times the amount of benefits received. Benefits will be stopped, and any remaining benefits will be lost. You may also be subject to criminal prosecution. If prosecuted, you may be required to pay court costs and fines, face jail time, perform community service or any combination of these.

Appeal Rights

If you disagree with this redetermination you have the right to an appeal requesting a hearing before an administrative law judge. Your appeal must be received within 30 calendar days from the mail date of this redetermination. If your appeal is filed after the deadline, you must include the reason your appeal is late in your statement. You can also attach copies of any documents that support your appeal.

You can submit your appeal online at www.michigan.gov/uia through your Michigan Web Account Manager (MiWAM) and upload documents. If you wish to appeal in writing, complete Form UIA 1733, *Protest of a Determination*. This form is located on the website under the Forms link. Include your name, case number and social security number or Michigan Identification Number (MIN) on documents submitted with your appeal. Fax the completed Form UIA 1733 and any supporting documents to 1-616-356-0739 or mail to Unemployment Insurance Agency, P.O. Box 124, Grand Rapids, MI 49501-0124. If you fax or mail your appeal, it must be signed.

Your appeal must be received no later than December 14, 2020 or this redetermination becomes final.

Claimant

In accordance with the provisions of the MES Act, benefits payable as a result of this redetermination will be paid, even though an appeal may be filed at a later date. **However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you may be required to repay the benefits improperly received.**

If you appeal, protect your rights by continuing to certify for benefits. You may report online through your MiWAM account 24 hours a day during your reporting week at www.michigan.gov/uia, or report by calling MARVIN at 1-866-638-3993, Monday through Saturday, 8:00 a.m. to 7:00 p.m. If you go back to work, report this fact when you certify. You must report all work and gross wages from all sources, even if you have not yet been paid.

Important Advocacy Information

An Advocate may be able to assist you at the hearing. This service is free. Some restrictions may apply. After you receive your *Notice of Hearing*, call the Advocacy Program at 1-800-638-3994 to request an advocate. Provide the Appeal Number from your Notice of Hearing form. If the ALJ finds that you have committed an intentional misrepresentation you must pay the cost of the advocacy fees.

Hearing Information

If you disagree with a redetermination and chose to appeal by requesting a hearing before an ALJ, you have the right to present testimony and other evidence and the right to subpoena witnesses and records. If you request an appeal and fail to attend the hearing, the ALJ may dismiss your case. If you are not the appealing party and fail to attend the hearing, a decision will be issued based only on the evidence at the hearing and may not be in your favor.

If your address changes it is important to update it with Unemployment Insurance.

If you have questions, contact UIA Customer Service at 1-866-500-0017, from 8 a.m. to 4:30 p.m. Monday through Friday. TTY customers use 1-866-366-0004.

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.

Spanish

¡IMPORTANTE! Este documento (s) contiene información importante sobre sus derechos, responsabilidades y / o beneficios de compensación de desempleo. Es fundamental que comprenda la información de este documento.

INMEDIATAMENTE: Si es necesario, llame al 1-866-500-0017 para obtener ayuda en la traducción y comprensión de la información en el (los) documento (s) que ha recibido.

Arabic

"هناك! يحتوي هذا المستند (المستندات) على معلومات هامة عن حقوقك الخاصة بتعويضات البطالة، ومسؤولياتك و/أو مخصصاتك، ولذلك فمن المهم جدًا 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

- গুরুত্বপূর্ণ: এই তথ্যপত্র আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে গুরুত্বপূর্ণ সূচনা দেওয়া আছে। এটা গুরুত্বপূর্ণ যে এই তথ্যপত্র খাকা সূচনাগুলি আপনি ভালো করে বুঝে নেন।
- আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে খাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।"

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

- E RËNDËSISHME!** Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e kompensimit të papunësisë. Është e rëndësishme që ju të kuptoni informacionin në këtë dokument.
- MENJËHERË:** Nëse është e nevojshme, telefononi 1-866-500-0017 për ndihmë në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.

Duplicate

EXHIBIT B



Docket No.: 20-028282
Case No.: 24375736
Employer:
Claimant: CHRISTINE M HOLIFIELD
SSN: [REDACTED]

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

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