

**The claimant had to provide childcare for her two children because their schools were closed as a result of COVID-19. She would have been able to obtain childcare if she had been offered work, and could have worked full time. She therefore was available for work within the meaning of the law.**

**Board of Review  
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**Issue IDs:   0049 5255 49  
                  0050 0962 44  
                  0050 6312 41  
                  0050 9875 14  
                  0051 5378 44**

### Introduction and Procedural History of this Appeal

The claimant appeals decisions by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant separated from her position with the employer on June 19, 2020. She filed a claim for unemployment benefits with the DUA, which was denied in a series of determinations issued between August 18, 2020 and August 21, 2020. The claimant appealed these five determinations to the DUA hearings department. Following a hearing on the merits attended only by the claimant, the review examiner affirmed the agency's initial determinations and denied benefits in five decisions rendered on October 17, 2020.<sup>1</sup> We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant was not available to work within the meaning of the law from the week beginning June 21, 2020, through September 12, 2020 and, thus, was disqualified under G.L. c. 151A, § 24(b). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we remanded the case to the review examiner to obtain additional information on the claimant's availability for work. The claimant attended the remand hearing. Thereafter, the review examiner issued his consolidated findings of fact. Our decision is based upon our review of the entire record.

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<sup>1</sup> Issue ID # 0049 5255 49 pertains to the claimant's eligibility from the week beginning June 21, 2020, through the week beginning July 12, 2020. Issue ID # 0050 0962 44 pertains to the claimant's eligibility for benefits for the week beginning July 19, 2020. Issue ID # 0050 6312 41 pertains to the claimant's eligibility for benefits for the week beginning July 26, 2020. Issue ID # 0050 9875 14 pertains to the claimant's eligibility for benefits for the week beginning August 2, 2020. Issue ID # 0051 5378 44 pertains to the claimant's eligibility for benefits for the week beginning August 9, 2020, through September 12, 2020. As all five issues were heard at the same time, are governed by the same section of law, and are based upon the same facts, we consolidate these issues into a single decision.

The issue before the Board is whether the review examiner's decisions, which concluded that the claimant was not available for work within the meaning of the law from the week beginning June 21, 2020 through September 12, 2020, are supported by substantial and credible evidence and are free from error of law.

### Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. The claimant filed a 2020-01 claim for unemployment insurance benefits. The effective date of the claim is 6/21/2020.
2. The claimant has a BA in social psychology and associate's degrees in education and business.
3. The claimant worked for a charter school from 2010 to 6/19/2020. The claimant worked as math teacher for the charter school from 2010 to 2011. The claimant then worked as a full-time student support specialist for the charter school from 2011 to 2012. In this role, the claimant provided emotional support for children who experienced trauma. The claimant then worked as a math teacher for the charter school until 6/19/2020. The claimant worked full-time in her last year of employment with the charter school. The claimant worked on a remote basis from 3/14/2020 through 6/19/2020.
4. The claimant worked as a tutor for [Employer A] from 2011 to 2012. The claimant works as a wardrobe worker for a theater on an as needed basis. The claimant does this work once or twice per year.
5. The claimant has two children. The claimant's son is six years old. The claimant's daughter is four years old.
6. The claimant's son attended school prior to the COVID-19 pandemic. The claimant's daughter attended a childcare program prior to the COVID-19 pandemic. The school and the childcare program closed due to the COVID-19 pandemic.
7. In the period 6/21/2020 to 9/15/2020, the claimant's son did not attend any school program or childcare program.
8. Since 6/21/2020, the claimant's daughter has not attended any school program or childcare program.
9. In the period 6/21/2020 to 9/15/2020, the claimant provided childcare for her son and daughter at home.
10. In the period 6/21/2020 to 9/15/2020, the claimant would have sought alternative childcare arrangements if an employer had offered work to her. The

claimant would have secured care for her children so that she could work up to forty hours per week. The claimant would have found a daycare provider for her children and she could have afforded to pay for daycare. The claimant's son started a hybrid kindergarten program in early September 2020. The claimant's son performed his school work on a computer at home. The claimant's son's grandparents were available to care for him while he participated in this remote program. With these childcare arrangements, the claimant would have been available to work at an employer's facility and/or remotely from 8:00 a.m. to 5:00 p.m. on weekdays.

11. The claimant searched for work in the period 6/21/2020 to 9/15/2020. The claimant performed two to four work search activities in each week in that period. The claimant used the websites LinkedIn, Glass Door, and School Spring. School Spring posts educational jobs. The claimant also networked and perused town school websites. The claimant searched for teacher jobs, school counselor jobs, and paraprofessional jobs. The claimant did not apply for any jobs in the period 6/21/2020 through 9/15/2020 because she was not qualified enough or because there were not a lot of open positions. The claimant was not offered any work in the period 6/21/2020 through 9/15/2020.

12. From 6/21/2020 onward, the claimant has not had any illness, physical condition, or psychological condition that has limited her ability to work full-time.

### Ruling of the Board

In accordance with our statutory obligation, we review the decisions made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusions are free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not available for work within the meaning of the law from the week beginning June 21, 2020, through September 12, 2020.

Our decision in this case is governed by G.L. c. 151A, § 24(b), which provides, in pertinent part, as follows:

[An individual, in order to be eligible for benefits under this chapter, shall] . . . (b)  
Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted . . . .

Ordinarily, under federal and Massachusetts law, claimants are only eligible for benefits if they are physically capable of, available for, and actively seeking full-time work, and they may not turn down suitable work. In this case, because the claimant seeks benefits from the week beginning June 21, 2020, the effective date of her claim, through September 12, 2020, we must also consider temporary modifications to the unemployment law brought about by the COVID-19 pandemic.

As authorized by the Emergency Unemployment Insurance Stabilization and Access Act (EUISSA) and the United States Department of Labor (DOL) in response to the COVID-19 pandemic, the DUA has announced temporary policy changes pertaining to the availability and work search requirements under G.L. c. 151A, § 24(b). Specifically, the DOL has informed state workforce agencies that they have significant flexibility in implementing the able, available, and work search requirements of the unemployment insurance program.<sup>2</sup>

With regard to availability, an individual may be considered available for work if she is available for any work for all or a portion of the week claimed, provided any limitation upon her availability does not constitute a withdrawal from the labor market.<sup>3</sup> Based upon this guidance, the DUA has announced that claimants, who must remain at home because they are unable to secure childcare for a dependent due to COVID-19, may be considered available for work so long as they could work from home via a teleworking or remote set-up. DUA UI Policy and Performance Memo (UIPP) 2020.12 (Oct. 8, 2020), pp. 2–3.

In the present case, the claimant explained that she had to provide childcare for her children during the period from the week beginning June 21, 2020, through September 15, 2020, because her children’s school and childcare program closed due to the COVID-19 pandemic. Consolidated Findings ## 6–9. She further explained that she would have been able to obtain childcare arrangements that would have allowed her to work full-time remotely or at an employer’s facility during the period from the week beginning June 21, 2020, through September 15, 2020. Consolidated Finding # 10. As such, she meets the modified availability requirements from the week beginning June 21, 2020, through September 15, 2020.

We, therefore, conclude as a matter of law that the claimant may not be disqualified under G.L. c. 151A, § 24(b), because, pursuant to temporary DUA policy and regulations, the claimant has met the eligibility requirements adopted in response to the COVID-19 pandemic.

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<sup>2</sup> UIPL 10-20, 3(b).

<sup>3</sup> UIPL 10-20, 4(b).

The review examiner's decisions are reversed. The claimant is entitled to receive benefits from the week beginning June 21, 2020, through September 12, 2020, if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - February 18, 2021**



Michael J. Albano  
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS  
STATE DISTRICT COURT  
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:  
[www.mass.gov/courts/court-info/courthouses](http://www.mass.gov/courts/court-info/courthouses)

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

LSW/rh