

**The claimant did not present sufficient evidence to verify her 2019 net income from self-employment. She is entitled only to the minimum PUA weekly benefit amount.**

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
Member**

**Issue ID: N6-F84V-HHD2**

### Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny Pandemic Unemployment Assistance (PUA benefits). We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for PUA benefits with the DUA, effective February 23, 2020, which was approved at a weekly benefit amount of \$510.00 in a determination issued on May 13, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination, concluding that the claimant was not entitled to an increased weekly benefit amount in a decision rendered on January 8, 2021. We accepted the claimant's application for review.

The review examiner determined that the claimant was not eligible for an increased PUA weekly benefit amount, as she did not present sufficient evidence to show that her 2019 net income from self-employment exceeded \$53,069.00. 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 tax documentation from the claimant showing her 2019 net income from self-employment. 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.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant had not presented sufficient evidence to show that she was entitled more than a \$510.00 weekly benefit amount, is supported by substantial and credible evidence and is free from error of law.

### Findings of Fact

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

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective February 23, 2020 with a weekly benefit amount (WBA) of \$510.

2. The claimant is a self-employed independent real estate agent. The claimant receives an IRS Form 1099-MISC for her income from the brokerage firm that she works through. The claimant has an accountant prepare her taxes and she files using Schedule C.
3. At the time that the claimant filed for PUA, she had not yet filed her taxes for the 2019 tax year.
4. On her application for PUA benefits, the claimant reported to the Department of Unemployment Assistance (DUA) that her total income was \$102,747 for the 2019 calendar year.
5. As proof of her 2019 income, the claimant submitted her 2019 IRS Form 1099-MISC showing that she earned \$102,747.50.
6. The claimant has business expenses as part of her activities as a real estate agent. The claimant did not provide a copy of her 2019 Schedule C or other documentation to establish her net income for income verification purposes.
7. On May 13, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Income Verification Determination— informing the claimant that the documentation she submitted for her claimed 2019 wages was sufficient to support wages of \$53,069.00.
8. The claimant timely appealed the May 13, 2020 determination. The claimant’s appeal request stated, “Income verification PUA used is incorrect[.] Did not use MY 1099[.]”
9. The claimant’s 2019 Form 1040-SR, Line 7a shows other income from line 9 of Schedule 1. This amount is \$67,553. The source of the income is not indicated in the document.

Credibility Assessment:

During the remand hearing, the claimant understood that her tax filing was needed to document a redetermination of her income and benefit determination. She also insisted that the information used for the initial determination was inaccurate because her Form 1099 has a different amount.

At the remand hearing, the claimant acknowledged that she knew the net income amount was the basis for the determination and agreed to submit her tax filing with Schedule C. She purportedly read into the record the net income amount from her Schedule C and agreed to submit the tax filing with Schedule C. However, the claimant did not submit a Schedule C. She only submitted an image of the first page from her 2019 Form 1040-SR. This document was uploaded twice.

Even after discussing the use of net income for verifying business income, the claimant persisted in an appeal focused on her Form 1099-MISC income amount.

The source of the income in the line 7a amount from the claimant's Form 1040-SR represents an amount that is different from the Schedule C net income amount of \$79,000 that the claimant purported to read from her Schedule C during the remand hearing. The claimant was given ample opportunity to submit the Schedule C along with her tax filing to verify her income. She did not do so. Consequently, her net self-employment income from 2019 could not be found.

### Ruling of the Board

In accordance with our statutory obligation, we review the record and the decision 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 original conclusion is 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. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, as discussed more fully below, we reject the review examiner's legal conclusion that the record contained sufficient information to verify \$53,069.00 in net income from self-employment during the 2019 calendar year.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and administered by the U.S. Secretary of Labor. The CARES Act specifies that a claimant's benefit rate under the PUA program is governed by 20 C.F.R. § 625.6, which provides, in relevant part, as follows:

(a) In all States, except as provided in paragraphs (c) and (d) of this section, the amount . . . payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment. In no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week.

(1) Except as provided in paragraph (a)(2) or (b) of this section, in computing an individual's weekly amount . . . qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied . . .

(2) For the purposes of paragraph (a)(1) of this section the base period to be utilized in computing the . . . weekly amount shall be the most recent tax year that has ended for the individual (whether an employee or self-employed) . . . . The self-employment income to be treated as wages for the purpose of computing the weekly amount under this paragraph (a) shall be the net income reported on the tax return of the individual as income from all self-employment. . . .

The CARES Act also incorporates applicable state law in determining a claimant's covered employment and wages. This includes G.L. c. 151A, § 1(s)(a), which provides, in relevant part, as follows:

(s)(A) "Wages", every form of remuneration of an employee subject to this chapter for employment by an employer, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all remuneration paid in any medium other than cash.

In accordance with applicable state law and the governing provisions of the CARES Act, a claimant's PUA benefit will be calculated based on a claimant's gross wages as well as net income from any self-employment for the 2019 calendar year. *See* 20 C.F.R. § 625.6(a)(2).

Pursuant to the Board's remand order, the review examiner requested that the claimant submit her completed 2019 tax returns, including the Schedule C income tax form prepared and filed by the claimant's accountant. *See* Consolidated Finding # 2. Following the hearing, the claimant submitted a picture of the first page of her 2019 Form 1040-SR. *See* Consolidated Finding # 9. This form contains information about the claimant's gross income from 2019 but does not identify the source or sources of said income or list any expenses associated with that income. As such, we cannot determine the claimant's net income from self-employment during the 2019 calendar year. Because we cannot determine the claimant's net income from self-employment for 2019, she is only entitled to the minimum weekly benefit amount.

We, therefore, conclude as a matter of law that the claimant's PUA benefit entitlement shall be set at the minimum weekly amount.

The review examiner's decision is affirmed in part and reversed in part. The claimant is monetarily eligible for PUA benefits, but her weekly benefit rate for PUA benefits shall be set at the minimum weekly rate of \$267.00.



Charlene A. Stawicki, Esq.  
Member

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 22, 2021**



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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