

The claimant's federal and state tax returns showed her net income from self-employment during the 2019 calendar year was \$66,278. Her weekly benefit amount for the PUA program will be based on that amount.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member**

Issue ID: N6-F864-FNHT

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) modifying the claimant's entitlement to 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 April 12, 2020, which was approved in a Notice of Income Verification Determination issued on May 12, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner modified the agency's initial determination, concluding the claimant was entitled to only the minimum weekly benefit amount, in a decision rendered on October 30, 2020. We accepted the claimant's application for review.

Benefits were awarded based on the review examiner's determination that the claimant did not present sufficient evidence to verify her net income from self-employment in 2019. After considering the recorded testimony and evidence from the hearing, the review examiner's original decision, and the claimant's appeal, we remanded the case to the review examiner to allow the claimant an opportunity to provide additional evidence showing her net income from self-employment. The claimant attended the remand hearing. Thereafter, the review examiner issued her 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 did not present sufficient evidence to verify her alleged 2019 net income from self-employment, 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 are set forth below in their entirety:

1. The claimant filed a claim for Pandemic Unemployment Assistance (PUA) which was determined to be effective April 12, 2020.

2. The claimant's Weekly Benefit Amount (WBA) was initially determined to be \$793.00.
3. Prior to filing for PUA, the claimant was self-employed full-time as an IT consultant during 2019. Her business is a sole proprietorship and is currently legally active.
4. The claimant initially reported to the Department of Unemployment Assistance (DUA) that she had a gross income of \$89,442.02 in 2019.
5. The claimant filed her 2019 taxes on October 13, 2020. She has two (2) acceptance reports to show when she submitted her 2019 taxes: A Federal Tax Return Acceptance Report that has a submission time stamp of "10-13-2020 7:26 PM MDT" and an acceptance date of "10-13-2020," and a Massachusetts Tax Return Acceptance Report with a submission time stamp of "10-13-2020 7:26 PM MDT" and acceptance date of "10-14-2020."
6. In 2019, the claimant's net income from her self-employment was \$66,278.00 and her total business expenses were \$22,657.00.

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. However, as discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant did not present sufficient evidence to verify her 2019 net income from self-employment.

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.¹ The CARES Act specifies that a claimant's benefit rate under the PUA program is governed by 20 CFR 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 Pub. L. 116-136 (Mar. 27, 2020), § 2102.

(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 purposes 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 CFR 625.6 (a)(2).

The claimant's 2019 federal and state tax returns show that her net income from self-employment in the 2019 calendar year was \$66,278.00. Consolidated Findings ## 5 and 6. Thus, the claimant presented sufficient information to verify that her net income from self-employment in 2019 was \$66,278.00.

We, therefore, conclude as a matter of law that the claimant's PUA benefit amount should be calculated based on a total 2019 income of \$66,278.00.

The review examiner's decision is affirmed in part and reversed in part. The claimant is monetarily eligible for PUA benefits, but her weekly rate and total PUA benefits shall be calculated based upon her net income from self-employment of \$66,278.00 for the 2019 calendar year.



Charlene A. Stawicki, Esq.
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 2, 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

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