

The claimant was able to establish her net self-employment income by presenting her 2019 federal tax return with a Schedule C. These net earnings shall be added to her 2019 gross wages to calculate her PUA weekly and total benefit amount.

**Board of Review
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Member**

Issue ID: N6-FJLR-5737

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 amount of 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 July 26, 2020, which was approved. In a determination issued on August 28, 2020, the DUA determined that the claimant was entitled to a PUA benefit amount based upon 2019 wage income of \$38,772. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, the review examiner modified the agency's initial determination and concluded that the claimant was entitled to a PUA benefit amount based upon 2019 wages of \$42,679.56, in a decision rendered on March 4, 2021. We accepted the claimant's application for review.

This benefit amount was awarded after the review examiner determined that the claimant presented sufficient evidence of her 2019 wage income, but not of her 2019 net income from self-employment. 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 for the review examiner to consider the additional evidence contained in the claimant's 2019 tax returns, which were submitted with her appeal to the Board. 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's weekly PUA benefit amount was to be calculated only on her 2019 wage income, is supported by substantial and credible evidence and is free from error of law, where the additional evidence of her 2019 tax returns shows additional net income from self-employment.

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”) effective July 26, 2020.
2. The Department of Unemployment Assistance (DUA) initially determined the claimant’s weekly benefit amount (WBA) to be \$373.00.
3. In 2019, the claimant worked two jobs as a nurse practitioner.
4. The first job the claimant worked was as an independent contractor. The claimant earned \$27,292.00 in net income from this job in 2019.
5. The claimant worked a second job in 2019 for a healthcare organization, and had W-2 gross earnings of \$42,679.56.

Credibility Assessment:

The claimant credibly testified and provided corroborating documentation regarding both her gross W-2 wages and net self-employment earnings for 2019.

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. Based upon these new consolidated findings, we disagree with the review examiner’s legal conclusion that the claimant’s PUA weekly benefits must be based only on her 2019 wage income, as discussed below.

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.

Thus, 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.

At the initial hearing, the claimant presented a 2019 Form 1099 as evidence of her self-employment income. Because the Form 1099 shows only gross income, the review examiner properly excluded it from the calculation of the claimant's weekly PUA benefit amount. We remanded the case to consider the additional evidence presented on appeal, the claimant's 2019 federal tax return, which includes a Schedule C (Profit or Loss from Business).

Consolidated Finding # 4, derived from that Schedule C, now includes the claimant's 2019 net income of \$27,292.00 from self-employment. For purposes of establishing the claimant's PUA benefit amount, this shall be added to the claimant's 2019 gross wage income of \$42,679.56. *See* Consolidated Finding # 5.

We, therefore, conclude as a matter of law that the claimant's PUA benefit amount shall be calculated based on her total gross wages and net self-employment income from 2019, \$69,971.56.

The review examiner's decision is affirmed in part and reversed in part. The claimant remains monetarily eligible for PUA benefits, but the claimant's weekly benefit rate and total PUA benefits shall be calculated based upon her gross wages and net income from self-employment of \$69,971.56 for the 2019 calendar year.

BOSTON, MASSACHUSETTS
DATE OF DECISION - November 30, 2021



Paul T. Fitzgerald, Esq.
Chairman



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

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.

AB/rh