

**Claimant, a New Hampshire resident, is self-employed as a massage therapist in Massachusetts. She was required to close her business pursuant to the government shutdown order, and upon reopening, experienced a significant reduction from her usual number of clients. Board held that claimant is eligible for PUA benefits under §§ 2102(a)(3)(A)(ii)(I)(jj) and (kk) of CARES Act. Claimant is not eligible for approximately two-month period between expiration of the shutdown order and her reopening of the business.**

**Board of Review  
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Chairman  
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Member  
Michael J. Albano  
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**Issue ID: N6-FJV7-DLKJ**

### 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 March 15, 2020, which was denied in a determination issued on September 15, 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 and denied PUA benefits in a decision rendered on February 19, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant had failed to establish that she was unemployed in Massachusetts for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and, thus, the claimant was not eligible for PUA benefits. 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 evidence regarding the claimant's 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 had not shown that she was working in Massachusetts when she was affected by COVID-19, 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) with an effective date of March 15, 2020. The claimant's weekly benefit amount (WBA) was determined to be \$267.
2. The claimant's husband (the husband) suffers from high blood pressure.
3. In 2019, 2020, and 2021, the claimant worked as a self-employed, licensed massage therapist.
4. Because of the nature of her work, the claimant must be in close physical proximity to and touch her customers.
5. Through November, 2019, the claimant rented a bed to perform her massaging services at a location in [Town A], Massachusetts. In November, 2019, the claimant moved to a new leased location, also located in [Town A], Massachusetts.
6. The claimant, a New Hampshire resident, commutes to work by driving approximately 20 minutes to her place of business in [Town A], Massachusetts.
7. In 2019, the claimant earned \$13,447 in net income from her self-employment.
8. Prior to the COVID-19 pandemic, the claimant averaged approximately 20 customers per week.
9. On March 15, 2020, as a result of government mandates because of COVID-19, the claimant was forced to temporarily shut down her business and stop working.
10. The claimant could have reopened her business around the end of June 2020 once the government mandates were lifted. However, due to concerns regarding the husband's high blood pressure, and the inability to socially distance in her line of work, the claimant initially delayed reopening her business.
11. On September 1, 2020, the claimant reopened her business.
12. Since reopening her business, the claimant has worked in a limited capacity. Given customers' fear of catching COVID-19, the claimant has averaged between 10 and 15 customers after reopening on September 1, 2020.
13. In 2020, due to the COVID-19 mandated shutdown and a decrease in the number of customers after reopening her business, the claimant earned \$454 in net income from her self-employment.

Credibility Assessment:

The claimant and the husband provided forthcoming and detailed testimony throughout the remand hearing. In support of her testimony, the claimant submitted ample documentation in the form of bank statements, tax returns, lease payments, room rental agreements, and her massage therapist license. The Board of Review requested a monthly breakdown of the claimant's gross earnings in 2020. The documentation submitted does not contain a monthly breakdown. However, the other evidence and the claimant's testimony do indicate that, overall, the claimant had less earnings in 2020 than in 2019. Taken as a whole, it is concluded the claimant's testimony and supporting corroborating documentation is credible

### 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. As discussed more fully below, we disagree with the review examiner's legal conclusion that the claimant is ineligible for PUA benefits.

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.<sup>1</sup> In order to qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. To be considered a covered individual, the claimant must self-certify that she is unemployed for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk). One of these listed reasons provides that individuals whose place of employment is closed as a direct result of COVID-19 may self-certify under subsection (jj).<sup>2</sup> Additionally, pursuant to the provisions of the CARES Act, the U.S. Department of Labor (DOL) has issued guidance about qualifying for PUA benefits. Its Unemployment Insurance Program Letter (UIPL) 16-20 (April 5, 2020) specifies that, pursuant to subsection (kk), an independent contractor may qualify for PUA benefits if the COVID-19 public health emergency severely limited his or her ability to continue performing his or her customary work activities.<sup>3</sup> The DOL has clarified that coverage under this criteria is extended to self-employed individuals who experienced a significant diminution of services due to COVID-19.<sup>4</sup> Finally, a claimant must file for PUA benefits in the state where he or she was working at the time he or she became unemployed.<sup>5</sup>

The claimant is a New Hampshire resident and filed her PUA claim with a New Hampshire address. *See Consolidated Finding # 6.* At the initial hearing, the claimant testified that she is self-employed as a massage therapist and works out of an office she leases in [Town A], Massachusetts. However, because the claimant's documentary evidence, including bank

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<sup>1</sup> Pub. L. 116-136 (Mar. 27, 2020), § 2102.

<sup>2</sup> § 2102(a)(3)(A)(ii)(I)(jj).

<sup>3</sup> *See* UIPL 16-20, Attachment I, C(1)(k), p. I-6.

<sup>4</sup> *See* UIPL 16-20, Change 2 (July 21, 2020), 4(b), p. 2.

<sup>5</sup> *See* UIPL 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3

statements and a Two-Year Comparison Report-Schedule C for 2018–2019, do not show that the claimant’s work was located in Massachusetts, the review examiner concluded that the record lacked substantial evidence that the claimant was eligible to file for PUA in Massachusetts. We remanded the case for the review examiner to consider whether additional documents that the claimant submitted with her appeal to the Board showed that she was working in Massachusetts in 2020.

After remand, the record in this case includes substantial evidence which establishes that the claimant was forced to stop performing work in Massachusetts due to the COVID-19 public health emergency. Since 2019, the claimant has been self-employed as a licensed massage therapist with an office in Massachusetts. *See Consolidated Findings ## 3 and 5.* The claimant provided a copy of her 2020 and 2021 Massage Therapist licenses issued by the Massachusetts Division of Professional Licensure, a copy of a lease agreement for a property located in Massachusetts, and a business certificate issued by the Town of [Town A] in her name for this address. *See Remand Exhibits ## 3, 4, 6, and 7.* In 2019, the claimant earned \$13,447 in net income from her self-employment. *See Consolidated Finding # 7.* The claimant was forced to stop working on March 15, 2020, when the government shutdown orders required her to temporarily shut down her business. *See Consolidated Finding # 9.* The claimant reopened her business on September 1, 2020, but she has seen fewer customers than she did before the COVID-19 pandemic. *See Consolidated Findings ## 11 and 12.* Due to the COVID-19 related closure and reduction in clientele, the claimant earned \$454 in net income from her self-employment in 2020. *See Consolidated Finding # 13.*

The claimant has satisfied the eligibility criteria under §§ 2102(a)(3)(A)(ii)(I)(jj) and (kk) of the CARES Act. She has shown that her place of employment was closed as a direct result of the COVID-19 public health emergency, and that, upon reopening, she experienced a significant diminution of her usual self-employment services due to COVID-19. She has shown that she is eligible to file a claim for PUA benefits in Massachusetts, because her place of business was located in Massachusetts at the time her work was affected by COVID-19.

However, we note that the claimant testified that the claimant could have re-opened her business at the end of June, 2020, but chose to wait until September 1<sup>st</sup> due to concerns regarding the close contact required by her work. *See Consolidated Finding # 10.* Where the claimant was no longer required by the government to keep her business closed but remained closed due to general fears regarding COVID-19 exposure, the claimant is not eligible for PUA benefits for this period.<sup>6</sup> Accordingly, the claimant is not eligible for benefits for the period encompassing the weeks beginning June 21, 2020, through August 23, 2020.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was prevented from working in Massachusetts for listed COVID-19 reasons under §§ 2102(a)(3)(A)(ii)(I)(jj) and (kk) of the CARES Act.

The review examiner’s decision is affirmed in part and reversed in part. The claimant is denied PUA benefits for the week beginning June 21, 2020, through August 29, 2020. The claimant is

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<sup>6</sup> *See* UIPL 16-20, Change 1, Attachment I, F, question 41, p. I-10.

entitled to receive PUA benefits for the periods March 15, 2020, through June 20, 2020, and again beginning August 30, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 8, 2022**



Charlene A. Stawicki, Esq.  
Member

Member Michael J. Albano 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.

CLC/rh