

Claimant, who performed personal care work and ran errands for elderly clients, established through income tax returns, copies of checks for services rendered, and copies of time sheets for work performed, that she had Massachusetts-based work that was affected by the COVID-19 pandemic. She is eligible for PUA benefits.

**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-FM7T-39J8

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 reverse.

The claimant filed a claim for PUA benefits with the DUA, effective March 22, 2020, which was denied in a determination issued on October 7, 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 January 11, 2021. We accepted the claimant's application for review.

Benefits were denied after the review examiner determined that the claimant failed to show that she was working in Massachusetts in 2020 when her work was impacted by the COVID-19 pandemic. 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 about the claimant's work activities in 2020. 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 was not eligible for benefits because she failed to show that she was working in Massachusetts in 2020 when her work was impacted by the COVID-19 public health emergency, 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) with an effective date of March 22, 2020.
2. On October 7, 2020, the Department of Unemployment Assistance (DUA) issued the claimant a Notice of Non-Monetary Issue Determination, informing

her that she was not eligible to receive benefits beginning the week ending February 8, 2020. She was informed that she was not eligible to receive benefits, because she failed to respond with the appropriate documentation by the due date.

3. The claimant lives in Massachusetts.
4. Since the effective date of her claim, the claimant was able to work. No physical ailment prevented her from working.
5. The claimant timely appealed the October 7, 2020 Notice of Non-Monetary Issue Determination.
6. The claimant filed her 2019 and 2020 Federal and Massachusetts Income Tax Returns.
7. In 2019 the claimant earned \$5,206 in net wages and \$4,681 in gross wages.
8. In 2020 the claimant earned \$7,829 in net wages and \$7,190 in gross wages.
9. The claimant had one main client she provided in home care for in 2020. The claimant was paid by her client's niece for the services the claimant provided. The checks contain the name and address of the niece. The checks are for work on a predominantly bi-weekly basis in 2020.
10. In 2020, the claimant provided tutoring in English for a friend and was paid by check, approximately \$352.60, for her services.
11. The claimant has a series of checks, representing payment, from a client for whom she provided homecare and personal assistance for, along with personal shopping. The checks are for work done on behalf on the client in 2020. The checks contain the name and address of the client.

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 is not eligible for PUA benefits.

The claimant in this case seeks PUA benefits, a new unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.¹ In

¹ Pub. L. 116-136 (Mar. 27, 2020), § 2102.

order to qualify for PUA benefits, the claimant must show that she is a covered individual with a listed COVID-19 related reason for being unemployed under the CARES Act. An eligible COVID-19 listed reason under the CARES Act at § 2102(a)(3)(A)(ii)(I)(gg), is that an individual will be eligible for PUA benefits if they were “scheduled to commence employment and d[id] not have a job or [were] unable to reach the job as a direct result of the COVID-19 public health emergency.”

The claimant is self-employed. In 2020, she performed home care for an elderly client; tutored a friend in English; and provided home care, personal assistance, and personal shopping for a friend. *See Consolidated Findings ## 9–11.* The claimant was paid for these services by check and provided copies of these checks from her bank (and copies of some timesheets) after the remand hearing. *See Remand Exhibits ## 8–10 and 11.* In addition to providing copies of checks and timesheets, the claimant also provided complete copies of her 2019 and 2020 federal and state income tax returns, confirming that she had earnings in Massachusetts for those years. *See Remand Exhibits ## 6–7.*

In view of the state and federal response to the COVID-19 public health emergency, as well as the nature of the claimant’s work performing services for elderly clients, we can reasonably infer that she became unable to engage in any such work in Massachusetts when she filed her PUA claim in March, 2020.²

We further note that the claimant provided a letter from the niece of (and person with power of attorney for) her primary client, noting the hours worked by (and money paid to) the claimant in 2020. *See Remand Exhibit # 5.* The client’s niece indicated the claimant performed 23.75 hours of work in January of 2020, 20.75 hours of work in February, and 8.00 hours of work in March of 2020. *Id.* The claimant resumed working 101.00 hours in September of 2020, and 18.50 hours in October of 2020. *Id.* While the figures cited as payment in the letter vary slightly from the copies of deposited checks provided by the claimant’s bank (*compare Remand Exhibits ## 5 and 8*), they reflect the claimant’s loss of employment around the time the public health emergency was declared.³

The review examiner’s consolidated findings, supplemented by the documentary evidence provided by the claimant on remand, support the conclusion that the claimant performed services in Massachusetts for various clients in 2020, which were curtailed by the COVID-19 public health emergency declared by the federal and state governments in approximately March of 2020.

² We note in this regard, that, on March 10, 2020, Governor Baker declared a State of Emergency due to COVID-19 (Exec. Order No. 591), and, on March 23, 2020, he issued COVID-19 Order No. 13, closing all non-essential businesses in Massachusetts. *See DUA UI Policy and Performance Memorandum (UIPP) 2021.03 (Jan. 29, 2021)*, p. 2.

³ During the remand hearing, the claimant testified that she worked substantially more hours in September of 2020 because her client required around-the-clock care in a rehabilitation facility, and ultimately had to be moved from an assisted living facility to a nursing home with full-time assistance. When this move occurred in October of 2020, the claimant’s work for this client ended. The claimant’s testimony regarding the change in her work for this client during 2020, along with the documents she provided from her client’s niece and her bank, while not explicitly incorporated into the review examiner’s findings, are part of the unchallenged evidence introduced at the hearing and placed in the record, and they are thus properly referred to in our decision today. *See Bleich v. Maimonides School*, 447 Mass. 38, 40 (2006); *Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training*, 64 Mass. App. Ct. 370, 371 (2005).

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she was out of work in Massachusetts for the listed COVID-19 reason under the CARES Act, § 2102(a)(3)(A)(ii)(I)(gg).

The review examiner's decision is reversed. The claimant is entitled to receive PUA benefits for the week beginning March 22, 2020, and for subsequent weeks if otherwise eligible.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 9, 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

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.

JPCA/rh