

**The claimant presented evidence showing a genuine offer of employment that was scheduled to start in January 2021. Because the claimant had to care for her mother who was diagnosed with COVID-19, and the ensuing complications of pneumonia, she was eligible for PUA benefits during the period she provided ongoing care for her mother. Although the claimant asserted that she was also caring for her 15-year-old son, who was learning remotely, she failed to establish that he required her supervision. Held the claimant is not eligible for PUA benefits during the period she was out of work solely due to her son's remote learning.**

**Board of Review  
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**Issue ID: N6-H4D9-H5D3**

### 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 January 3, 2021, which was denied in a determination issued March 15, 2021. 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 September 7, 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 had planned to commence work and was forced out of work 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 consider additional documents, which the claimant submitted on appeal, and to take other evidence about the claimant's job offer and how it was affected by the COVID-19 pandemic. 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 has not established that she had planned to commence employment, which was delayed 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 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 January 3, 2021. The claimant's weekly benefit amount (WBA) was determined to be \$267.
2. On March 16, 2020, the claimant's son's school was closed due to the COVID-19 pandemic.
3. On December 19, 2020, the claimant was offered a job in dispatch with a towing company in [Town], Massachusetts.
4. The claimant accepted the position because she believed her son would be back to attending school in person.
5. On January 3, 2021, the claimant was scheduled to begin working at the towing company.
6. In January 2021, the claimant's son's school reopened and offered hybrid learning. However, the claimant chose to continue remote learning for her son, since she did not feel comfortable sending her son in person yet because the school could not guarantee social distancing.
7. The claimant was unable to begin her dispatch job as scheduled due to her son continuing to be remote learning.
8. There was no one else in the household that was able to watch her son while he was at home participating in remote learning.
9. On or around January 3, 2021, the claimant was affected by [COVID]-19 when she opted not to send her son back to school for in person learning. She felt there was still too high a rate of [COVID]-19 cases, and the school was not able to keep the kids safe by social distancing.
10. On January 31, 2021, the claimant's mother was diagnosed with [COVID]-19. She then developed pneumonia as a direct result of [COVID]-19. Her mother needed to be rushed to the hospital and was put on an oxygen breathing machine. Her mother remained sick for about three months.
11. There was no one else available to care for the claimant's mother while she was sick with pneumonia, which was a direct cause of [COVID]-19. The claimant did not need to care for her mother for any other reasons.
12. In September 2021, the claimant's son went back to in-person learning.
13. In October 2021, the claimant was able to begin new employment with a towing and recovery company in Massachusetts.

### Credibility Assessment:

The claimant provided forthcoming and detailed testimony throughout the remand hearing. In support of her testimony, the claimant submitted ample documentation including emails and letters from her son's school, two job-offer letters, doctor's notes regarding her mother's diagnosis, and paystubs from her current employment. Taken as a whole, it is concluded the claimant's testimony and supporting corroborating documentation is [sic] 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 does not qualify for any PUA benefits.

The claimant in this case seeks PUA benefits, an unemployment benefit program provided under § 2102 of the CARES Act of 2020 and administered by the U.S. Secretary of Labor.<sup>1</sup> To qualify for PUA benefits, the claimant must show that she is a covered individual within the meaning of the CARES Act. In order to meet the definition of a covered individual, an individual must be "unemployed, partially unemployed, or unable or unavailable to work" for a reason listed under § 2102(a)(3)(A)(ii)(I)(aa)–(kk).<sup>2</sup>

The record before us shows that the claimant was offered a job as a dispatcher for a towing company in Massachusetts on December 19, 2020. *See* Consolidated Finding # 3. In addition to her testimony, the claimant provided the review examiner with a job offer verification letter from the towing company, which was admitted into evidence as Remand Exhibit 4.<sup>3</sup> The claimant had initially accepted the job and was scheduled to begin on January 3, 2021, because she believed that her son, who was learning remotely at that time due to the COVID-19 public health emergency, would return to in-person learning beginning January, 2021. *See* Consolidated Findings ## 4 and 5. In January 2021, the school reopened and began offering hybrid learning, but because the claimant believed that the school's social distancing guideline was inadequate to keep her son safe, she opted to continue full-time remote learning for her son. *See* Consolidated Finding # 6. Since the claimant was the only available caregiver for her son, she decided that she was unable to start her job on the scheduled date. *See* Consolidated Findings ## 7 and 8.

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

<sup>2</sup> *See* CARES Act, § 2102(a)(3)(A)(ii)(I).

<sup>3</sup> This document, while not explicitly incorporated into the review examiner's findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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).

An eligible COVID-19 listed reason under the CARES Act at § 2102(a)(3)(A)(ii)(I)(dd) is when “a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work.” However, the U.S. Department of Labor (DOL) has determined that, if schools offer hybrid instruction such that students are in-person some days of the week and remote learning others, then the school is deemed to be closed on the days of remote instruction.<sup>4</sup> Further, the DOL has stated that schools offering the option of remote or in-person instruction are deemed open and that “the primary caregiver is not eligible for PUA unless the individual has another listed COVID-19 reason for not working.”<sup>5</sup>

In this case, the record is unclear as to whether the school’s offer of hybrid instruction entailed students attending in-person some days a week and remote instruction on other days, or the option to choose between full-time in-person or remote learning, a distinction that would determine how many days of the week the school was deemed closed. However, even if the school was deemed closed due to COVID-19, the record shows that, at the time, the claimant’s son was a 15-year-old high school student.<sup>6</sup> Without any indication that the claimant’s son required supervision for a specific reason, it is presumed that a high school student of that age is able to learn remotely during the day without supervision.

Accordingly, the claimant has not established she was unable to start her scheduled job because her son required her caregiving responsibility at home. Unless she has another COVID-19 reason for being out of work, the claimant does not qualify for PUA benefits pursuant to 2102(a)(3)(A)(ii)(I)(dd).

Another eligible COVID-19 listed reason is § 2102(a)(3)(A)(ii)(I)(cc), an individual is “providing care for a family member or household member who has been diagnosed with COVID-19.” The DOL has stated that an individual is “providing care” under this category if the provision of care requires such ongoing and constant attention that the individual’s ability to perform other work functions is severely limited. In contrast, an individual is not “providing care” under this category if the family member is able to adequately care for him or herself.<sup>7</sup>

The consolidated findings show that the claimant was also caring for her mother, who was diagnosed with COVID-19 on January 31, 2021, followed by pneumonia, and the evidence presented shows that it was a direct result and side effect of COVID-19. *See* Consolidated Finding # 10. During the period when the claimant’s mother was ill from COVID-19 and pneumonia and was living with the claimant, the claimant was her mother’s sole and primary caretaker. *See* Consolidated Finding # 11. The claimant testified that her mother was severely ill for about three months, and that, by some time in August 2021, her mother began to recover, was able move back to her own home, and take care of herself. The claimant had to accompany her mother to her visits to the doctors and help her move around the house, because she was on an oxygen breathing

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<sup>4</sup> *See* U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 3 (Aug. 27, 2020), p. 3-4.

<sup>5</sup> *Id.* at p. 4.

<sup>6</sup> This portion of the claimant’s testimony is also part of the unchallenged evidence introduced at the hearing.

<sup>7</sup> *See* UIPL 16-20, Change 4 (Jan. 8, 2021), Attachment 1, p. I-6.

machine and had very little mobility.<sup>8</sup> With this evidence, the claimant has established that she was out of work due to the need to provide ongoing and constant care for a family member diagnosed with COVID-19 from January 31, 2021, through August, 2021.

We, therefore, conclude as a matter of law that law that the claimant has met her burden to show that she was unable to start a job for the listed reasons under the CARES Act, § 2102(a)(3)(A)(ii)(I)(cc).

The review examiner's decision is affirmed in part and reversed in part. The claimant is entitled to receive PUA benefits for the week beginning January 31, 2021, until August 28, 2021, if otherwise eligible. The claimant is not entitled to receive PUA benefits from her effective date of January 3, 2021, until January 30, 2021, or from the week beginning August 28, 2021, and indefinitely thereafter.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - July 21, 2022**



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](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.

KB/rh

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<sup>8</sup> This portion of the claimant's testimony is part of the unchallenged evidence in the record as well.