

Board reversed the denial of PUA benefits because DUA issued its notice to disqualify the claimant more than a year after it started paying her benefits. The first payment was deemed to be an initial determination that the claimant was eligible for benefits. Pursuant to G.L. c. 151A, § 71, the DUA had only one year to reconsider that determination.

**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-HFND-R8R4

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 May 3, 2020, which was denied in a determination issued on September 8, 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 in a decision rendered on December 16, 2021, concluding that the claimant had failed to establish that she became unemployed due to the COVID-19 public health emergency, and, thus, the claimant was not eligible for PUA benefits in Massachusetts. We accepted the claimant's application for review.

Ruling of the Board

In rendering our decision, we have reviewed the recorded testimony and evidence from the hearing, the review examiner's decision, the DUA's electronic record-keeping system (FAST UI), and the claimant's appeal. We need not consider whether the claimant established that she lost work in Massachusetts due to the COVID-19 public health emergency, as required under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020¹, because the DUA's underlying determination was improperly issued under G.L. c. 151A, § 71.

Upon the filing of a claim, the Massachusetts unemployment statute requires that the DUA determine whether or not the claim is valid.² The DUA will authorize the payment of PUA benefits upon a minimum showing the claimant was a covered individual who was out of work for a qualifying reason under the CARES Act, and, *inter alia*, that the individual had performed that work in Massachusetts.³ Benefits are to be paid promptly, or denied, in accordance with its determination.⁴

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

² G.L. c. 151A, § 39(a).

³ See U.S. Department of Labor Unemployment Insurance Program Letter (UIPL) 16-20, Change 1 (Apr. 27, 2020), Attachment I, B(7), p. I-3.

⁴ G.L. c. 151A, § 39(a).

Since the agency is prohibited by law from paying benefits without first determining that the claimant had a listed COVID-19 qualifying reason for losing work in Massachusetts, and the DUA's FAST UI system shows that the claimant was, in fact, paid benefits on this claim in a payment issued on July 1, 2020, we conclude that the DUA had, at that point, determined that the claimant lost work in Massachusetts for a qualifying reason under the CARES Act.

This means that the DUA's September 8, 2021, determination was actually a redetermination. Pursuant to the time limitations set forth under G.L. c. 151A, § 71, the DUA may not issue a redetermination on a claim more than one year from the date of the original determination unless there is misrepresentation of fact. Because the claimant was originally determined to be eligible on July 1, 2020, the agency's September 8, 2021, redetermination was issued more than one year from the date of the original determination. There is nothing in the record or FAST UI to indicate misrepresentation.

We, therefore, conclude as a matter of law that the DUA's September 8, 2021, Notice of Disqualification was time-barred under G.L. c. 151A, § 71.

The review examiner's decision is reversed. The claimant is entitled to benefits under her PUA claim if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 10, 2023



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.

JCT/rh