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
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Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member

Issue ID: N6-HL52-5JJL

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 8, 2020, which was initially approved. However, on February 3, 2023, the DUA determined that the claimant was not entitled to benefits. 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 March 8, 2023, concluding that the claimant had failed to establish that she was unemployed for a COVID-19 listed reason under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020[1], and, thus, the claimant was not eligible for PUA benefits. We accepted the claimant's application for review.

Ruling of the Board

In rendering our decision, we have reviewed 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 for a listed reason related to the COVID-19 public health emergency, as required under the CARES Act, 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 that 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

[1] Pub. L. 116-136 (Mar. 27, 2020), § 2102.
[2] G.L. c. 151A, § 39(a).

that work in Massachusetts.[3] Benefits are to be paid promptly, or denied, in accordance with its determination.[4]

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 May 13, 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 February 3, 2023, 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 May 13, 2020, the agency's February 3, 2023, 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 February 3, 2023, Notice of Disqualification was time-barred under G.L. c. 151A, § 71.

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - January 23, 2024

Paul T. Fitzgerald, Esq.
Chairman

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.

[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).

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.

BGM/rh