

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KENDRA L. CROSS**  
Claimant

**APPEAL NO: 17A-UI-08088-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAINSTREAM LIVING INC**  
Employer

**OC: 07/16/17**  
**Claimant: Respondent (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 31, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 28, 2017. The claimant participated in the hearing. Marcanne Lynch, Human Resources Manager and Traci Miner, Program Coordinator, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was on intermittent FMLA from January 2017 until approximately May 1, 2017. On May 2, 2017, the employer met with the claimant and offered her additional leave and placed the following conditions on the leave: The employer needed to fill the claimant's position as an assistant team lead; it would continue to maintain the claimant's status and pay; the claimant could perform administrative duties; and the claimant would return to work as a direct support staff member if the employer did not have assistant team lead hours available when she returned to work.

The claimant was released to return to work with lifting restrictions the employer agreed to accommodate July 21, 2017. The employer met with the claimant July 31, 2017, and offered her 27 hours as a direct care support staff member and 13 hours of administrative duties per week.

The week ending July 29, 2017, the claimant did not work any hours; the week ending August 5, 2017, the claimant worked 13 hours; the week ending August 12, 2017, the claimant worked 11.50 hours; the week ending August 19, 2017, the claimant worked 27 direct care hours; and the week ending August 26, 2017, the claimant worked 17.30 direct care hours. The employer had 40 hours available for the claimant each of those weeks.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Between direct care hours and administrative hours, the employer has 40 hours per week available for the claimant but the claimant has chosen to work less than 40 hours per week due to her medical condition even though she has been released to return to work with lifting restrictions which the employer is accommodating. Because the claimant is not working the 40 hours the employer has made available to her, the administrative law judge must conclude the claimant is not available to work under the meaning of the law. Accordingly, benefits must be denied.

**DECISION:**

The July 31, 2017, reference 01, decision is reversed. The claimant is not able to work and available for work effective July 16, 2017. Benefits are denied.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn