

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA LONG

Claimant

APPEAL NO. 08A-UI-06924-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEHAVIORAL HEALTH RESOURCES INC

Employer

**OC: 05-04-08 R: 02
Claimant: Appellant (4)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 25, 2008, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on August 13, 2008. The claimant did participate. The employer did participate through Wendy Dennis, Human Resources Coordinator.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was off work for a pregnancy leave beginning February 7, 2008. Her leave, pursuant to the Family and Medical Leave Act (FMLA) was due to end on May 1, 2008. The claimant herself was able to return to work that day, but her children had been born prematurely and their pediatrician did not want them in a group day care setting until June 1. The claimant could not find a day care provider for her children on May 1, so she did not return to work. The claimant remained home caring for her children until they could be placed in a group day care setting on June 1. The claimant currently has arranged day care for her children so that if she finds employment, she can return to work. The claimant did not have day care arranged so that she could return to her regular job at her usual shift on May 1, 2008. The claimant's request to the employer for additional leave was denied. The employer was not required to grant the claimant additional leave time.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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".

The claimant did not return to work on May 2 because she did not have any suitable day care arranged for her children. The claimant has now made arrangements as of June 1, 2008 to have daycare available for her children. The claimant was not available for work on May 2 because she needed to care for her children. If the claimant had obtained suitable day care for her children, she would have returned to work on May 1. The claimant cannot be considered able to work and available for work during the time period she did not have child care for her children. Where an individual is unable to work due to the lack of child care, she is not considered available for work within the meaning of the law. 871 IAC 24.23(8). The claimant is not able to and available for work from May 1 until June 1, 2008.

DECISION:

The July 25, 2008, reference 03, decision is modified in favor of the appellant. The claimant is not able to work and available for work effective May 1, 2008 through June 1, 2008. Benefits are denied during that period. Thereafter, benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw