

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

CRYSTAL F WELLS	:	
	:	HEARING NUMBER: 21B-UI-01639
Claimant	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
CEDAR PRADIS IA HOMECARE LLC	:	
	:	
Employer	:	

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3 24.23-10

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION IN THE CLAIMANT'S FAVOR BUT WITHOUT EFFECT ON THE EMPLOYER:**

**THE RECOVERY OF OVERPAID FPUC & LWA BENEFITS IS
MODIFIED TO BE CONSISTENT WITH THE FOLLOWING DISCUSSION:**

The following is added to the Reasoning and Conclusions of Law:

The CARES Act provides:

In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency, **except** that the State agency may waive such repayment if it determines that—

(A) the payment of such Federal Pandemic Unemployment Compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience

PL116-136, Sec. 2104(f)(2). In this case the Claimant was allowed benefits and the Employer appealed. After the hearing, the Employer prevailed. We note that Claimants are advised throughout the appeal process to continue to file weekly claims even if denied benefits. The Claimant here did so and was paid benefits until the Administrative Law Judge issued the appeal decision locking the claim. The Claimant was paid FPUC in addition to regular state benefits. We now consider whether the FPUC overpayment can be waived.

In deciding the question of fault, we will consider factors such as whether a material statement or representation was made by the Claimant in connection with the application for benefits, whether the Claimant knew or should have known that a fact was material and failed to disclose it, whether the Claimant should have known the Claimant was not eligible for benefits, and whether the overpayment was otherwise directly caused by the knowing actions of the Claimant. In deciding equity and good conscience we consider whether the overpayment was the result of a decision on appeal, and the financial hardship caused by a decision requiring overpayment. *Cf.* 871 IAC 24.50(7) (setting out factors for similar issue under TEUC from 2002). Applying these factors to the totality of the circumstances in this case including that there is no evidence of material misrepresentation, we find on this individualized basis that any possible **FPUC overpayment** that may be imposed as a result of the Administrative Law Judge's remand should be waived.

The Employer should note that the Employer will not be charged for any waived FPUC.

We also modify to address the potential recovery of overpaid Lost Wages Assistance.

The *Continued Assistance for Unemployed Workers Act of 2020* signed into law on December 27, 2020 provides:

SEC. 262. Lost Wages Assistance Recoupment Fairness.

(a) Definitions.—In this section—

(1) the term “covered assistance” means assistance provided for supplemental lost wages payments under subsections (e)(2) and (f) of section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174), as authorized under the emergency declaration issued by the President on March 13, 2020, pursuant to section 501(b) of such Act (42 U.S.C. 5191(b)) and under any subsequent major disaster declaration under section 401 of such Act (42 U.S.C. 5170) that supersedes such emergency declaration; and

(2) the term “State” has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(b) Waiver Authority For State Liability.—In the case of any individual who has received amounts of covered assistance to which the individual is not entitled, the State shall require the individual to repay the amounts of such assistance to the State agency, except that the State agency may waive such repayment if the State agency determines that—

- (1) the payment of such covered assistance was without fault on the part of the individual; and
- (2) such repayment would be contrary to equity and good conscience.

(c) Waiver Authority For Federal Liability.—Any waiver of debt issued by a State under subsection (b) shall also waive the debt owed to the United States.

H.R. 133, 116 Congress, Sec. 262.

As we did with the FPUC we find that the criteria for waiver of any Lost Wages Assistance (LWA) have been met. We thus waive any state liability for any LWA overpayment that may be imposed as a result of the Administrative Law Judge's remand. This will also waive any federal liability for any LWA overpayment.

The Employer should note that the Employer will not be charged for any waived LWA.

If after today the Claimant should receive an overpayment decision concerning the overpayment(s) we have waived then the Claimant should appeal that decision. The Claimant should retain our decision to present to IWD in response to any such decision. The Claimant likewise should present this order to IWD if the Claimant should receive a bill for a waived overpayment.

DECISION:

The decision of the Administrative Law Judge dated **March 3, 2021** is **AFFIRMED AS MODIFIED IN THE CLAIMANT'S FAVOR** but with **NO EFFECT ON THE EMPLOYER**.

Any overpayment of FPUC benefits which were collected after April 26, 2020 which overpayment has been found or which may hereafter be found, is hereby waived, and the Claimant has no obligation to pay back those benefits.

Any overpayment of LWA benefits which has been found (up to an amount of \$1,800), or which may hereafter be found, is hereby waived, and the Claimant has no obligation to pay back those benefits.

These waivers are conditioned so that the waivers are only effective if the payment of waived benefits was as a result of the regular benefit claims at issue in this case. Furthermore, these waivers apply only if the Claimant does not receive FPUC or LWA as a result of PUA claims made during the weeks at issue in this case. If the Claimant does receive a second FPUC and/or LWA payment covering the same period of time as this case, then Claimant will not be allowed to retain the double payment.

The Claimant continues to be obliged to repay any possible overpayment in state benefits at this time. The Employer will not be charged for waiver of FPUC or LWA since they are federally funded benefits. In all other respects the decision of the Administrative Law Judge is affirmed.

James M. Strohman

Ashley R. Koopmans

DISSENTING OPINION OF MYRON R. LINN:

I respectfully dissent from the majority decision of the Employment Appeal Board. After careful review of the record, I would affirm the decision of the administrative law judge without modification.

Myron R. Linn

RRA/fnv