

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTONETTE BENTON
Claimant

APPEAL 21A-DUA-01530-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/14/21
Claimant: Appellant (4)**

PL 116-136, Sec. 2012 – Federal Pandemic Unemployment Assistance

STATEMENT OF THE CASE:

On February 05, 2021, the claimant, Antonette Benton, appealed the assessment for Pandemic Unemployment Assistance (PUA) decision dated May 13, 2021 that denied PUA benefits. A hearing was scheduled for July 20, 2021 at 11:00 a.m. The claimant participated. The claimant was represented by Daphney Daniel, attorney at law. Official notice was taken of the agency records. Exhibits A, B, C and D were received into the record.

ISSUE:

Is the claimant eligible for Pandemic Unemployment Assistance?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed the application for PUA on May 13, 2021. On the claimant's application for PUA she provided information about herself. The claimant wrote the reason for being unemployed, "A child or other person in my household for whom I am the primary caregiver is unable to attend school or another facility that is closed as a direct result of the Covid-19 public health emergency and such school or facility care is required for me to work."

The claimant last worked as a full-time customer service representative for Sedgwick on February 8, 2021. The claimant was performing these tasks remotely from her home. The claimant last worked on that day because it became too difficult for her to help her children attend school 100% online. The claimant has three children who attend the Iowa City School System. She has two sons, who are 17-year-old twins, Byron and Noah. Byron has attention deficit hyperactivity disorder. She also has a 6-year-old daughter, Naomi. The children's father is legally separated and does not live in the same household.

Naomi has heightened risk of severe health consequences if she is infected by Covid19. The claimant provided a note written by her physician, Dr. Meredith Fishbane-Gordon, on July 15, 2021. Dr. Fishbane-Gordon states the claimant's daughter was a 26-week pre-mature baby. As a result, she has been "diagnosed with triplegic cerebral palsy, a VP shunt, mild intellectual disability, [history] status epilepticus on anti-epileptic medication and mild intermittent asthma."

Dr. Fishbane-Gordon concluded that due to these impairments, Naomi is at high risk for severe disease resulting from a Covid19 infection. Dr. Fishbane-Gordon states she supports the family's choice to keep her home to attend school 100% online. (Exhibit D) During the hearing, claimant testified Dr. Fishbane-Gordon agreed with the assessment to have Naomi stay home to attend school 100% online at some point in March 2020. When Naomi was attending classes in the Iowa City School System prior to the Covid19 pandemic, she had a team of special education teachers to help her instruction.

Although the claimant could perform her work from home, her children's instruction required ongoing and constant attention.

On March 31, 2021, Byron Benton Jr., tested positive for Covid19. The claimant provided a copy of the positive test result. (Exhibit C)

On April 1, 2021, the claimant tested positive for Covid19. The claimant provided a copy of the positive test result. (Exhibit B)

The claimant received a letter from the school system stating that since Byron reported symptoms on March 26, 2021, the earliest he could return to school was on April 6, 2021. She received another letter stating Naomi Benton and Noah Benton could not return until April 18, 2021. The claimant provided copies of these letters. (Exhibit A)

The following section outlines the claimant's receipt of regular unemployment, Pandemic Emergency Unemployment Compensation and extended benefits:

The claimant filed a claim for benefits effective March 11, 2021. The claimant was determined to be ineligible for regular unemployment insurance benefits because she voluntarily quit on February 8, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is eligible for PUA benefits.

The Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, Sec. 2102 provides for unemployment benefit assistance to any covered individual for any weeks beginning on or after January 27, 2020 and ending on or before December 31, 2020, during which the individual is unemployed, partially unemployed, or unable to work due to COVID-19.

That period was subsequently extended through the week ending March 13, 2021 and, in some cases, through the week ending April 10, 2021. See Consolidated Appropriations Act of 2021. On March 11, 2021, the President signed into law another extension for PUA benefits until September 4, 2021. Governor Kim Reynolds has limited eligibility for PUA benefits to weeks occurring before June 12, 2021.

The issue to be determined here is whether claimant is a "covered individual" within the meaning of applicable law.

The issue to be determined here is whether claimant is a "covered individual" within the meaning of applicable law. Section 2102(a)(3) defines individuals who are eligible for PUA benefits.

(3) COVERED INDIVIDUAL.—The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) provides self-certification that the individual—

(l) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

(aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;

(bb) a member of the individual’s household has been diagnosed with COVID–19;

(cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID–19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID–19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID–19;

(ii) the individual has to quit his or her job as a direct result of COVID–19;

(jj) the individual’s place of employment is closed as a direct result of the COVID–19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(ll) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (l); and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(l).

As stated above, the claimant must show she is a “covered individual” within the meaning of applicable law.

The first threshold the claimant needs to clear is to show she satisfies Section 2102(a)(3)(i) by showing she is disqualified for UI, PEUC and EB benefits. The claimant was disqualified from benefits effective February 8, 2021 because she voluntarily resigned on that date. The claimant filed her claim after December 27, 2020. She can only backdate her claim to December 6, 2020. See Department of Labor, Unemployment Insurance Program Letter, No. 16-20 Change 4, (January 8, 2021)(stating at pg. I-19 initial claims filed after December 27, 2020 can only be back dated to December 7, 2020 in states with Sunday week end date).

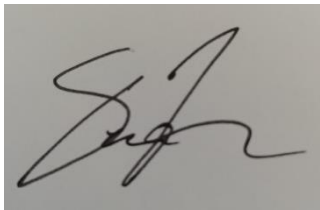
The second threshold the claimant needs to clear is she needs to self-certify under PL 116-136 Section 2102(a)(3)(A)(ii)(l)(aa)-(ll). On her application, the claimant wrote she could self-certify under PL 116-136 Section 2102(a)(3)(A)(ii)(l)(dd). The representative rejected this conclusion because Iowa City School System was open throughout the period she made weekly claims. During the hearing, the claimant contends she can self-certify to circumstances in PL 116-136 Section 2102(a)(3)(A)(ii)(l)(aa), (bb), (cc) and (ii).

The administrative law judge finds the claimant falls within the scope of PL 116-136 Section 2102(a)(3)(A)(ii)(l)(ii). See Department of Labor, Unemployment Insurance Program Letter, No. 16-20 Change 4, (January 8, 2021) at I-7 states an employee can self-certify under this section when “ceasing employment is an involuntary decision compelled by the circumstances identified in this section.” Naomi’s in-person attendance would have resulted in heightened risk of serious injury or death. This was not the claimant’s determination. It was verified by her physician. The Department of Labor gives an example of the claimant quitting, so she can quarantine due to her own positive diagnosis. The administrative law judge finds these circumstances more compelling as a cause to quit, than the one expressed in the UIPL. The bond between a mother and daughter is usually unmatched. As a result, he finds it is sufficient to satisfy PL 116-136 Section 2102(a)(3)(A)(ii)(l)(ii). Benefits are granted.

DECISION:

The assessment for PUA benefits decision dated May 13, 2021 that determined claimant was ineligible for federal PUA is modified in favor of the appellant.

Benefits are granted, provided she provide proof of employment sufficient to satisfy the requirement delineated in Department of Labor, Unemployment Insurance Program Letter, No. 16-20 Change 4, (January 8, 2021) at I-10, stating claimants who receive PUA payments after December 27, 2020 must submit documentation proving employment. Proof of employment includes, but is not limited to paycheck stubs, earnings and leave statements showing the employer's name and address and W-2s.



Sean M. Nelson
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July 30, 2021
Decision Dated and Mailed

smn/lj