

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KERRY A MORRIS
Claimant

APPEAL NO. 08A-UI-09506-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/21/08 R: 02
Claimant: Appellant (2)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 16, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 3, 2008. Claimant participated.

ISSUE:

The issue is whether claimant is able to and available for work effective September 21, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant had been employed as a full-time LPN Medicaid utilization reviewer working at home until her separation on September 22, 2008. She had been on maternity leave and was released to return to work on September 18, 2008. She has in-home childcare available with her retired mother or in a neighborhood childcare center. She is seeking medical utilization reviewer jobs that would allow her to work from home but is also interviewing for direct patient care jobs.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is 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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Claimant has no medical restriction or other limitation on her employability effective September 18, 2008 and she is seeking appropriate jobs given her education, training and work history. She also has adequate childcare arrangements for either a telecommuting job or direct patient care employment. Accordingly, benefits are allowed.

DECISION:

The October 16, 2008, reference 03, decision is reversed. The claimant is able to work and available for work effective September 21, 2008. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css