

**STATE OF FLORIDA**  
**REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 20-01464

vs.

Referee Decision No. 0043265514-02P

Employer/Appellee

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**ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION**

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This is an appeal of a decision in which the referee affirmed a determination holding the claimant disqualified from receipt of benefits under Section 443.101, Florida Statutes, because she was on a voluntarily initiated leave of absence, and held her overpaid benefits to which she was not entitled. A review of Department of Economic Opportunity (“Department”) records reveals this is a claim for Pandemic Unemployment Assistance (“PUA”) under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”), created by Public Law 116-136 (March 27, 2020), codified at 15 U.S.C. Chapter 116. Department records further reflect the benefits the claimant was held to have been overpaid due to the disqualification are PUA benefits. Florida law governs the appeals process for PUA. Emp. & Training Admin., U.S. Dep’t of Labor, Unemp. Ins. Program Letter 16-20, Change 1, p. I-14, #54 (Apr. 27, 2020). The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

Pursuant to the appeal filed in this case, the Reemployment Assistance Appeals Commission has conducted a complete review of the evidentiary hearing record and decision of the appeals referee. *See* §443.151(4)(c), Fla. Stat. The Commission’s review is generally limited to the evidence and issues before the referee and contained in the official record.

To be eligible for PUA benefits, a claimant must be a “covered individual” as defined under the CARES Act. 15 U.S.C. §9021(a)(3). A “covered individual” means an individual who (1) is not eligible for regular compensation or extended benefits under state or federal law or Pandemic Emergency Unemployment Compensation (PEUC) under section 2107 of the CARES Act *and* (2) provides self-certification that he or she is otherwise able and available for work except that he or she 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.

Whether the claimant is a “covered individual” is a threshold question in this case and Department records do not reveal that issue has been adjudicated. Moreover, whether the claimant is a covered individual or not, the disqualification provision at issue in this case is not relevant. Eligibility for PUA and the disqualification for a voluntary leave of absence are both based on the reason for the claimant’s unemployment. If the claimant’s unemployment is a direct result of COVID-19 as defined above, then she is eligible for PUA even if she voluntarily initiated a leave of absence. If the claimant’s unemployment is not a direct result of COVID-19, then she is not eligible for PUA, and there is no need to apply a Chapter 443 disqualification provision.<sup>1</sup> Since the referee’s decision affirms a leave of absence disqualification incompatible with fundamental PUA eligibility

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<sup>1</sup> Some state law provisions governing payment of regular reemployment assistance benefits, including disqualification provisions, apply to claims for PUA. 15 U.S.C. §9021(h); 20 C.F.R. §625.11. *See also* Emp. & Training Admin., U.S. Dep’t of Labor, Unemp. Ins. Program Letter 16-20, p. I-9 (Apr. 5, 2020). However, as explained, the disqualification provision applied in this case is incompatible with the specific provisions regarding PUA eligibility.

requirements, we quash the referee's decision and the underlying determination. The decision of the appeals referee and the Notice of Disqualification determination, Issue Identification No. 0043265514-01, are quashed. The Department is asked to evaluate whether the claimant is able to and available for work except that she is unemployed, or unable or unavailable to work, as a direct result of COVID-19 and issue a determination(s) as appropriate.<sup>2</sup>

It is so ordered.

## REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman  
Thomas D. Epsky, Member  
Joseph D. Finnegan, Member

This is to certify that on

1/25/2021,

the above order was filed in the office of the Clerk of the Reemployment Assistance Appeals Commission, and a copy mailed to the last known address of each interested party.

By: Benjamin Bonnell

Deputy Clerk

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<sup>2</sup> We note the claimant's May 7, 2020 PUA application is not available for review on CONNECT. (Department records reflect the claimant's PUA application was completed on an external "PEGA" website. It is the Commission's understanding that applications for PUA and other federal pandemic benefits completed on that website are not imported into the CONNECT system.) Thus, we are unaware of whether the claimant self-certified that any qualifying circumstances were applicable to her. However, we note that the claimant testified she worked as a caretaker for a client in the client's home and that, after informing the client's mother she was not feeling well but could not get an appointment to see her doctor for several months, the client's mother informed the claimant that she did want to take any chances with COVID since the client and other individuals in the household were at high risk and instructed the claimant to "just stay away." It is not clear from the record whether other work was available to the claimant with another client of this employer. We also note that the referee's finding of fact that the claimant's doctor told her not to work due to her (the claimant) being at high risk for COVID-19 is not supported by any evidence in the record. Rather, the claimant testified that the doctor did *not* tell her that.



DEPARTMENT OF ECONOMIC OPPORTUNITY  
REEMPLOYMENT ASSISTANCE PROGRAM  
PO BOX 5250  
TALLAHASSEE, FL 32314 5250



\*164471088 \*

<b>IMPORTANT:</b>	For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.
<b>IMPORTANTE:</b>	Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.
<b>ENPÒTAN:</b>	Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pràn àmpil tòn, paské tòn limitè pou ou ranpli apèl la.

**Docket No.** 0043 2655 14-02

**Jurisdiction:** §443.151(4)(a)&(b) Florida Statutes

***CLAIMANT/Appellant***

***EMPLOYER/Appellee***

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**APPEARANCES**

Claimant Representative

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## PANDEMIC UNEMPLOYMENT ASSISTANCE APPEAL DECISION

**Important appeal rights are explained at the end of this decision.**

**Derechos de apelación importantes son explicados al final de esta decisión.**

**Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.**

**Issues Involved:** LEAVE: Whether the claimant's unemployment is due to a leave of absence voluntarily initiated by the claimant, pursuant to Sections 443.036(29); 443.101(1)(c), Florida Statutes.

OVERPAYMENT: Whether the claimant received benefits to which the claimant was not entitled, and if so, whether those benefits are subject to being recovered or recouped by the Department, pursuant to Sections 443.151(6); 443.071(7); 443.1115, Florida Statutes and 20 CFR 615.8.

**Findings of Fact:** The claimant was hired as a part-time caretaker for employer . The claimant was hired by the employer, , in July of 2017. The claimant was working for a specific client when she was told by the client's mother not to return after relaying that she, the claimant, was not feeling well. The claimant's doctor told her not to work because her age and health placed at her high risk to contract Covid19. The claimant has been unable to resume patient care since the start of the pandemic.

The claimant filed a claim effective April 26, 2020 establishing a weekly benefit amount of \$125. The claimant received the weekly benefit amount of \$125 for the weeks ending May 2, 2020 through June 20, 2020.

**Conclusions of Law:** The law provides that a claimant will be disqualified for benefits for any week of unemployment due to a leave of absence voluntarily initiated by the claimant. As defined in the statute, "leave of absence" means a temporary break in service to an employer, for a specified period of time during which the employing unit guarantees the same or a comparable position to the worker at the expiration of the leave.

The record shows that the claimant's doctor advised her not to work. The claimant's position is a part-time caretaker. The claimant's age and health place at her high risk to contract Covid19. The claimant voluntarily initiated a leave of absence and therefore is not eligible to receive benefits.

The law provides that a claimant who was not entitled to benefits received must repay the overpaid benefits to the Department. The law does not permit waiver of recovery of overpayments.

The entry into evidence of a transaction history generated by a personal identification number establishing that a certification or claim for one or more weeks of benefits was made against the benefit account of the individual, together with documentation that payment was paid by a state warrant made to the order of the person or by direct deposit via electronic means, constitutes prima facie evidence that the person claimed and received reemployment assistance benefits from the state.

The claimant was not eligible to receive benefits for the weeks ending May 2, 2020 through June 20, 2020. Therefore, the claimant is overpaid.

**Decision:** The Determination dated September 25, 2020 which held the claimant ineligible to receive benefits for the benefit periods starting April 5, 2020 is AFFIRMED. The claimant was not eligible to receive benefits for the weeks ending May 2, 2020 through June 20, 2020, therefore, the claimant is overpaid.

**PUA:** The claimant may be eligible for Pandemic Unemployment Assistance in accordance with Section 2102 of the CARES Act of 2020, Public Law (Pub. L.) 116-136. For questions regarding this eligibility or instructions on how to apply for these benefits, the claimant can call the Department at 1-833 FL APPLY (1-833-352-7759) or visit <http://floridajobs.org/cares-act>.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on October 30, 2020.

**L. Davis**  
Appeals Referee



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GAIL ALLEN, Deputy Clerk

**IMPORTANT - APPEAL RIGHTS:** This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.003(4), filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Department and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

**A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at [connect.myflorida.com](http://connect.myflorida.com) or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's Web Site.**

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and the last five digits of the claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

**IMPORTANTE - DERECHOS DE APELACIÓN:** Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la distribución/fecha de envío marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.003(4), el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante reembolsar esos beneficios. La cantidad específica de cualquier sobrepago [pago excesivo de beneficios] será calculada por la Agencia y establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden.

**Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en [connect.myflorida.com](https://connect.myflorida.com) o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.**

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [docket number] y los últimos cinco dígitos del número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

**ENPÒTAN - DWA DAPÈL:** Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat distribisyon/postaj. Si 20yèm jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.003(4), depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki pèman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

**Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, [connect.myflorida.com](https://connect.myflorida.com) oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.**

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesajè lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon.

Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

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