

FILED
05-31-2023
Anna Maria Hodges
Clerk of Circuit Court
2022CV005868

BY THE COURT:

DATE SIGNED: May 31, 2023

Electronically signed by Honorable Pedro A. Colon
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 18

MILWAUKEE COUNTY

BRENAYDER WILLIAMS,

Plaintiff,

v.

Case No. 22-CV-5868

LABOR AND INDUSTRY REVIEW COMMISSION,

and

DEPARTMENT OF WORKFORCE DEVELOPMENT,

Defendants,

**DECISION AND ORDER REVERSING THE LABOR AND INDUSTRY
REVIEW COMMISSION’S DENIAL OF PANDEMIC
UNEMPLOYMENT ASSISTANCE**

Brenayder Williams seeks judicial review of a final decision issued by the Labor and Industry Review Commission (LIRC). At issue is whether a disabled independent contractor is eligible to receive pandemic unemployment assistance (PUA) when she received more Social Security Disability Income (SSDI) than she received from her independent contract work. For the reasons stated below, the court finds that LIRC misinterpreted the applicable statutes and incorrectly denied the claimant PUA benefits. LIRC’s decision must therefore be reversed.

INTRODUCTION

Bernayder Williams worked for eight months as an independent contractor in order to help support her autistic, 43-year-old son. As part of her job, she drove school-aged children and the elderly in a van on an assignment basis. She earned \$1,059 in 2019 and \$1,141 in 2020. She also received \$905 per month in disability benefits. Her last day of work was March 15, 2020, when her services were temporarily suspended as a result of the COVID-19 public health emergency.

On December 1, 2020, she filed an initial claim for PUA benefits, and on August 10, 2021, the Wisconsin Department of Workforce Development found her ineligible.

Williams appealed the determination, and a hearing on the merits was held in front of an Administrative Law Judge (ALJ) on January 4, 2022. On January 5, 2022, the ALJ determined that Williams was not eligible for PUA. In particular, the ALJ found that Williams was not a “self-employed individual,” as defined in 20 C.F.R. 625.2(n), because she received more from SSDI than she did from her work as an independent contractor.

Williams filed a timely appeal with LIRC, and on August 19, 2022, LIRC affirmed the ALJ’s decision.

On September 14, 2022, she filed the present action for judicial review.

STANDARD OF REVIEW

Judicial review of commission decisions in unemployment insurance claims is governed by Wis. Stat. § 108.09(7), which provides that a commission decision may only be set aside on the limited grounds: (1) that the commission acted without or in excess of its powers; (2) that the order or award was procured by fraud; or (3) that the findings of fact by the commission do not support the order or award. Whether an employee is entitled to unemployment benefits under

Wis. Stat. ch. 108—and by extension PUA benefits—typically presents both questions of fact and questions of law. *Nottelson v. DILHR*, 94 Wis. 2d 106, 115, 287 N.W.2d 763 (1980).

However, in this case LIRC’s decision involves only a question of law because the relevant facts are undisputed. *See Klatt v. LIRC*, 2003 WI App 197, ¶ 10, 266 Wis. 2d 1038, 669 N.W.2d 752.

Courts review LIRC's legal conclusions de novo, but in evaluating the persuasiveness of an administrative agency's arguments, a court may give “due weight” to the agency's experience, technical competence, and specialized knowledge.” *Mueller*, 388 Wis. 2d 602, ¶ 17 (citing *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶¶ 3, 84, 382 Wis. 2d 496, 914 N.W.2d 21).

DISCUSSION

I. LIRC’s statutory interpretation conflicts with the express language and purpose of the Coronavirus Aid, Relief, and Economic Security Act.

In this case, the court must interpret the Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. § 9001, *et seq.*, commonly denominated the CARES Act, which created new, temporary, federal unemployment insurance programs. The CARES Act established PUA, a temporary federal unemployment program that provided benefits to certain individuals who were not otherwise eligible for state unemployment insurance benefits. The CARES Act states that “the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially employed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation” 15 U.S.C. § 9021(b). “Covered individuals” are, in relevant part, those individuals who are not eligible for certain other compensation or benefits, and who are otherwise able to and available for work under applicable state law, but are unemployed, partially unemployed, or unable or unavailable to work for certain designated reasons relating to the COVID-19 pandemic. 15 U.S.C. § 9021(a)(3).

Notably, the PUA program extended economic assistance to people who lost work due to the pandemic but would not be eligible for regular unemployment-compensation benefits, such as “gig economy” workers who are ineligible for regular unemployment benefits because they are classified as independent contractors. As the United States Department of Labor (DOL) has explained, “PUA is a benefit of last resort for anyone who does not qualify for other [unemployment-compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in . . .the CARES Act.”¹

Pursuant to 15 U.S.C. § 902(b) - (d), PUA benefits are paid to “covered individuals,” who are defined by 15 U.S.C. § 9021(a)(3) as individuals who:

- (1) are not eligible for regular unemployment insurance, extended benefits, or certain pandemic-related unemployment insurance (15 U.S.C. § 9021(a)(3)A(i));
- (2) self certify that they are able and available to work under state law, but are unemployed, partially employed, or unable or unavailable to work because of various COVID-19-related reasons or “any additional criteria established by the Secretary [of the United States Department of Labor (DOL)]” (15 U.S.C. § 9021(a)(3)(A)(ii)(I)(aa)-(kk)); and
- (3) self-certify that they are self employed, seeking part-time employment, or would otherwise not qualify for regular unemployment (15 U.S.C. § 9021(a)(3)(A)(ii)(II)).

Accordingly, Williams is entitled to PUA benefits if she complied with the self-certification requirements and is able to demonstrate that: (1) she is ineligible for regular unemployment benefits; and (2) is able and available to work but unable to do so because of one of the designated reasons related to the COVID-19 pandemic. CARES Act § 2102(a)(3)(A). There is no dispute that Williams: (1) complied with the self-certification requirements; (2) was ineligible for regular unemployment benefits because she receives SSDI, *see* Wis. Stat. §§ 108.04(12)(f) and 108.04(2)(h); and (3) was able and available for work. The sole issue is whether Williams

¹ UIPL 16-20 Change 1, at I-8.

was unable to work because of the additional criteria established by the Secretary under 15 U.S.C. §9021(a)(3)(A)(ii)(kk).²

The court begins by noting that when interpreting a statute, a court's objective is "to determine what the statute means so that it may be given its full, proper, and intended effect."³ *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633. Statutory interpretation begins with the plain language of the statute. *Id.*, ¶ 45. "Statutory language is given its common, ordinary, and accepted meaning, except that technical or specially-defined words or phrases are given their technical or special definitional meaning." *Id.* In addition, statutory language must be interpreted "in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results." *Id.*, ¶ 46. Where possible, a court must read statutory language so as to "give reasonable effect to every word, in order to avoid surplusage." *Id.* In addition, statutes should be reasonably construed to avoid conflict. *See Law Enforcement Standards Bd. v. Village of Lyndon Station*, 101 Wis.2d 472, 489–90, 305 N.W.2d 89 (1981).

When two statutes conflict, a court is to harmonize them, *see Bingenheimer v. DHSS*, 129 Wis.2d 100, 107, 383 N.W.2d 898 (1986), scrutinizing both statutes and construing each in a manner that serves its purpose. *See Caldwell v. Percy*, 105 Wis.2d 354, 361–362, 314 N.W.2d 135 (Ct.App.1981). The principal objective of statutory interpretation is to ascertain and give

² Because the court finds that Williams is eligible for PUA benefits under the Secretary's additional criteria, it need not decide whether she is also eligible under the statutorily-enumerated COVID-19 reasons.

³ Courts interpret administrative regulations using the rules of statutory interpretation. *Hormel Foods Corp.*, 367 Wis. 2d 131, ¶30, 876 N.W.2d 99

effect to the intent of the legislature. *See Carlson & Erickson Builders v. Lampert Yards*, 190 Wis.2d 650, 658, 529 N.W.2d 905 (1995).

The court may also find guidance in various Unemployment Insurance Program Letters (UIPL) issued by the Secretary of the United States Department of Labor. On April 5, 2020, the Secretary issued its first UIPL, which explained the program as follows:

PUA provides benefits to covered individuals, who are those individuals not eligible for regular unemployment compensation or extended benefits under state or Federal law or pandemic emergency unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. Covered individuals also include self-employed, those seeking part-time employment, individuals lacking sufficient work history, and those who otherwise do not qualify for regular unemployment compensation or extended benefits under state or Federal law or PEUC.⁴

The Secretary also provided the following “operating instructions” regarding applicant eligibility:

Eligibility. Section 2102 of the Act provides for payment of PUA to “covered individuals.” “Covered individuals” are those individuals not qualified for regular unemployment compensation, extended benefits under state or Federal law, or pandemic emergency unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. “Covered individuals” also include self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC. . . . “Self-employed individuals” as defined in 20 C.F.R 625.2(n) means individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm. These individuals include independent contractors, gig economy workers, and workers for certain religious entities.⁵

With respect to 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk), the Secretary determined that “an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work

⁴ UIPL 16-20, issued on April 5, 2020.

⁵ *Id.*

because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities.”⁶ The Secretary also noted that a driver for a ridesharing service, who does not have a place of employment, may qualify for PUA benefits under subsection (kk) “if he or she has been forced to suspend operations as a direct result of the COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable.”

On April 27, 2020, the Secretary provided several clarifications, including the following:

28. Question: A full-time student who works part-time may be excluded from DUA because he or she has not lost their “principal source of income” as described under 20 C.F.R. §625.2(s). Is he or she eligible for PUA?

Answer: Yes. Provided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then he or she may be eligible for PUA.

The requirement that the employment of the “principal source of income” under the DUA does not apply to eligibility for PUA.⁷

On January 8, 2021, the Secretary reiterated that covered individuals include “individuals who have exhausted all rights to such benefits, as well as individuals who are self-employed, seeking part-time employment, lacking sufficient work history, or who are otherwise not qualified for regular unemployment compensation (UC), EB, and Pandemic Emergency Unemployment Compensation (PEUC) under Section 2107 of the CARES Act, and who otherwise meet the eligibility requirements of Section 2102 of the CARES Act.”⁸ The Secretary added that an applicant is a “covered individual” if he or she complies with the self-certification

⁶ *Id.*

⁷ UIPL 16-20, issued on April 27, 2020 (emphasis added).

⁸ UIPL 16-20, issued on January 8, 2021.

requirements and is able to demonstrate that he or she is not eligible for regular unemployment compensation. According to the Secretary:

This includes an individual who has exhausted all rights to such benefits, as well as an individual who is self-employed, seeking part-time employment, lacking sufficient work history, or who is otherwise not qualified for regular UC, EB, or PEUC. Self-employed individuals include independent contractors and gig economy workers.⁹

In an apparent attempt to provide additional clarification, the Secretary added the following statement:

To date, the Secretary has approved one additional criterion under item (kk): Self employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services, may self-certify under item (kk).¹⁰

On September 3, 2021, the Secretary stated:

PUA provides unemployment benefits to individuals who are: 1) not eligible for regular unemployment compensation (UC), Pandemic Emergency Unemployment Compensation (PEUC), or Extended Benefits (EB), including those who have exhausted all rights to such benefits, and those who are self-employed, seeking part-time employment, do not have sufficient wage history, or otherwise would not qualify for regular UC, PEUC, or EB; and 2) are otherwise able to work and available for work within the meaning of applicable state law, except that the individual is unemployed, partially unemployed, or unable or unavailable to work due to a specific COVID-19 related reason identified in Section 2102(a)(3)(A)(ii)(I)(aa)-(kk) of the CARES Act.¹¹

The Secretary defined self-employed individuals as “those who have filed an initial request for PUA and for whom it was determined that their primary reliance for income is on their performance of services in their own business or farm.” The Secretary reiterated that “[t]hese individuals include independent contractors, gig economy workers, and workers for certain religious entities.”¹²

⁹ *Id.*

¹⁰ *Id.*

¹¹ UIPL 16-20, issued on September 3, 2021.

¹² *Id.*

In this case, LIRC found that Williams did not meet the criteria enumerated in subsection (kk) because she was not a “self-employed individual.” Because 15 U.S.C. § 9021 does not define “self-employed individual,” LIRC relied on the definition set forth in the federal regulations that govern the disaster unemployment assistance (DUA) program. Specifically, LIRC relied on 15 U.S.C § 9021(h), which states:

(h) RELATIONSHIP BETWEEN PANDEMIC UNEMPLOYMENT ASSISTANCE AND DISASTER UNEMPLOYMENT ASSISTANCE. Except as otherwise provided in this section or to the extent there is a conflict between this section and part 625 of title 20, Code of Federal Regulations, such part 625 shall apply to this section as if –
(1) the term “COVID-19 public health emergency” were substituted for the term “major disaster” each place it appears in such part 625; and
(2) the term pandemic were substituted for the term “disaster” each place it appears in such part 625.

The federal regulations governing the DUA program define “self-employed individual” as one “whose primary reliance for income is on the performance of one’s own business.” 20 C.F.R. § 625.2(n). According to LIRC:

Subsection (kk) provides PUA benefits to self-employed individuals (including independent contractors) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency. It stands to reason that to be eligible via subsection (kk), one must be considered self-employed within the scope of the CARES Act. The ALJ found the claimant to not be considered self-employed, for the purpose of PUA, because the claimant’s primary reliance for income was not in the performance of services in her own business. Rather, her primary reliance for income is from her SSDI.

(footnotes omitted).

As stated above, Williams is entitled to PUA if she complied with the self-certification requirements and is able to demonstrate that: (1) she is ineligible for regular unemployment benefits; and (2) is able and available to work but unable to do so because of one of the designated reasons related to the COVID-19 pandemic. CARES Act § 2102(a)(3)(A). There is no dispute that Williams complied with the self-certification requirements. Nor is there a dispute

that she is ineligible for regular unemployment benefits because she receives SSDI. *See* Wis. Stat. §§ 108.04(12)(f) and 108.04(2)(h). At issue is whether Williams is unable to work pursuant to the “additional criteria established by the Secretary under 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk).¹³

When the Secretary issued his first UIPL on April 5, 2020, he did not expressly limit PUA eligibility under subsection (kk) to self-employed individuals. Instead, he explained that claimants may recover under this section if they were self-employed, seeking part-time employment, or were otherwise ineligible for regular unemployment compensation. On April 27, he clarified that “[t]he requirement that the employment of the ‘principal source of income’ under the DUA does not apply to eligibility for PUA.” While he later stated that subsection (kk) was limited to self-employed individuals, he most recently defined “self-employed individuals” as “those who have filed an initial request for PUA and for whom it was determined that their primary reliance for income is on the performance of services in their own business or farm.”

In this case, LIRC narrowly construed subsection (kk) to cover self-employed individuals within the meaning of 20 C.F.R. § 625.2(n). However, section 625 only applies “except as otherwise provided in [15 U.S.C § 9021(h)] or to the extent there is a conflict. . . .” To the extent there is a conflict, Williams raises a valid point. If eligibility for DUA is limited to employees and individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm, and if the legislative goal of the CARES Act is to provide broader benefits, then there would have been no need for the CARES Act, as Congress could simply have applied the DUA to the COVID-19 pandemic.

¹³ Because the court finds that Williams is eligible for PUA benefits under the Secretary’s additional criteria, it need not decide whether she was also eligible under the statutorily-enumerated COVID-19 reasons.

The recently decided case of *Matter of Muse*, 956 N.W.2d 1 (Minn. Ct. App. 2021), provides guidance. In *Muse*, a PUA applicant who lost her part-time employment due to the COVID-19 pandemic sought review of an unemployment law judge's determination that she was ineligible for PUA because she was a high school student. The Minnesota Department of Employment and Economic Development (DEED) argued that the plaintiff was not a "covered individual" under the CARES Act because Minnesota law prohibited high school students from qualifying for regular unemployment compensation benefits. The Minnesota Court of Appeals rejected the state agency's interpretation and concluded, under the plain language of the CARES Act, that state law banning high school students from collecting unemployment compensation benefits did not disqualify the high school students from PUA eligibility. The court reasoned that "[i]f the very thing that makes the person eligible for PUA benefits is treated as a disqualification, no one would be eligible for PUA benefits." *Id.* at 5.

Another factor that weighed against DEED's interpretation was the fact that the CARES Act offers "coverage for individuals who are not eligible for regular [unemployment compensation]," including "certain gig economy workers, clergy and those working for religious organizations who are not covered by regular [unemployment compensation], and *other workers who may not be covered by the regular [unemployment compensation] program under some state laws.*" UIPL 16-20, at 1-2 (emphasis added); *see also* UIPL 16-20 Change 1, at I-8 ("PUA is a benefit of last resort for *anyone* who does not qualify for other [unemployment-compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act." (emphasis added)). The court is persuaded by the logic and rationale of the Minnesota Court of Appeals.

Further guidance may be found in a recently-issued decision by the Iowa Workforce Development Unemployment Insurance Appeals Bureau. In *Green v. Iowa Workforce Development*, APPEAL 21A-DUA-01430-DB-T, the Appeals Bureau expressly held that a claimant should not be disqualified for PUA benefits based on the receipt of SSDI.¹⁴ Because the code of federal regulations did not define the phrase “primary reliance for income,” the Appeals Bureau referred to the Merriam-Webster’s Collegiate Dictionary’s definition of “income,” which defines the term as a gain or recurrent benefit usually measured in money that *derives from capital or labor*. According to the IAB:

Claimant’s social security disability insurance payments are not derived from capital or labor. Further, 20 CFR § 625.2(d)(5) defines “disability payments” to mean cash disability payments made pursuant to a governmental program as a substitute for cash unemployment payments to an individual who is ineligible for such payments solely because of the disability, except for payments made under workmen’s compensation acts for personal injuries or sickness. Disability payments are included in the definition of “compensation” under 20 CFR § 625.2(d). Deductions to the weekly PUA benefit shall include the amount of any benefits or insurance proceeds from any source not defined as “compensation” under § 625.2(d) for loss of wages due to illness or disability. Therefore, claimant’s social security disability insurance payments are not deductible from his PUA weekly benefit amount and are not considered “income” pursuant to 20 CFR § 625.2(n).

In this case, LIRC erroneously interpreted the applicable statutes in a manner that thwarts the full purposes and objectives of Congress. At all relevant times Williams remained attached to the job market and was able and willing to continue working, but was unable to do so for reasons related to the COVID-19 pandemic. As “an individual who works as an independent contractor with reportable income, she was a self-employed individual within the meaning of the CARES Act. When LIRC applied its overly narrow definition of self-employed individuals, it ignored the Secretary’s criterion that one’s principle source of income has no bearing on PUA

¹⁴ The decision may be found at <http://uidecisions.iowaworkforcedevelopment.gov/decision/webapi/decision?f=434e2d01-5690-425a-a67d-255376c524bb>.

eligibility, in direct conflict with the text and purpose of the CARES Act. To hold otherwise would make the language regarding independent contractors superfluous, contrary to legislative intent to provide benefits for workers who “otherwise would not qualify for regular employment,” and contrary to the canon against surplusage.

CONCLUSION

For the reasons stated above, LIRC’s decision to deny William’s request for PUA is

REVERSED.

SO ORDERED.

This decision is final for purposes of appeal.