

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



COMMONWEALTH REGISTER

VOLUME 43

NUMBER 12

DECEMBER 28, 2021

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NUMBER 12
DECEMBER 28, 2021

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SAIPAN HIGHER EDUCATION FINANCIAL ASSISTANCE

Office of the Mayor
Municipality of Saipan

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE SAIPAN HIGHER EDUCATION FINANCIAL ASSISTANCE PROGRAM (SHEFA)

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS OF THE
SAIPAN HIGHER EDUCATION FINANCIAL ASSISTANCE PROGRAM (SHEFA)
Volume 43, Number 09, pp 047594-047620, on September 28, 2021

Amendments to the Saipan Higher Education Financial Assistance Program Rules and Regulations

ACTION TO ADOPT PROPOSED REGULATIONS: Pursuant to the procedures of the Administrative Procedures Act, 1 CMC § 9104(a), the SHEFA Board of Directors hereby **ADOPTS AS PERMANENT** the Proposed Amendments to the SHEFA's Rules and Regulations, which were published in the Commonwealth Register at the above-referenced pages. The SHEFA Board of Directors announced that it intended to adopt them as permanent, and now does so.

I also certify by my signature below that as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Amendments to SHEFA's Rules and Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION. The proposed regulations were published in the Commonwealth Register as Volume 43, Number 09, pp 047594-047620, on September 28, 2021.

COMMENTS, MODIFICATION, AND AGENCY CONCISE STATEMENT, IF ANY: During the 30-day comment period, the SHEFA Program received no comments regarding the proposed regulations as referenced above. No individual requested a concise statement of the principal reasons for or against the proposed regulations.

AUTHORITY. The SHEFA Board of Directors has the authority to promulgate these regulations pursuant to 10 CMC § 3924(n). The proposed regulations and amendments were fully reviewed by the SHEFA Board of Directors, which approved and adopted them during its duly called board meeting on January 28, 2021.


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EFFECTIVE DATE: Pursuant to the Administrative Procedures Act, 1 CMC § 9105(b), these adopted regulations are effective 10 days after compliance with the Act, 1 CMC §§ 9102, and 9104(a) or (b), which in this instance, is 10 days after this publication in the Commonwealth Register.

ATTORNEY GENERAL APPROVAL FOR NON-MODIFIED REGULATIONS: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency, or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law.). As such, further approval is not required.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the 22 day of December, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.


Certified and ordered by:



OSCAR M. BABAUTA
Chairman
SHEFA Board of Directors

12/22/2021
Date

Filed and recorded by:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

12
~~12~~. 22. 2021
Date



Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD

P.O. Box 502078, Bldg., 1242 Pohnpei Court
Capitol Hill, Saipan, MP 96950

Tel No: (670) 664-4809 Fax: (670) 664-4814

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**PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF THE AMENDMENT TO THE
HEALTH CARE PROFESSIONS LICENSING BOARD FOR
ADDICTION PROFESSIONALS**

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED
AMENDMENTS TO REGULATIONS**

VOLUME 43, NUMBER 10, PP 047689 – 0477011 OF October 28, 2021

ACTION TO ADOPT PROPOSED REGULATIONS: The Health Care Professions Licensing Board, HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Health Care Professions Licensing Board announced that it intended to adopt them as permanent, and now does so.

PRIOR PUBLICATION: The prior publication was as stated above. The Health Care Professions Licensing Board adopted the attached regulations as final as of the date of signing below.

MODIFICATIONS FROM PRIOR PUBLISHED PROPOSED REGULATIONS, IF ANY: One comment received. and Board decided to retain current language to keep up with the national standards.

AUTHORITY: The Health Care Professions Licensing Board has statutory power to promulgate and effect regulations pursuant to 4 CMC §2206(b), as amended.

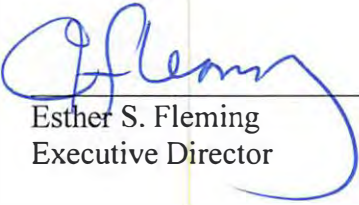
EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments to the Regulations for Addiction Professionals are effective 10 days after compliance with the APA, 1 CMC §§9102 and 9104(a) or (b), which in this instance, is 10 days after publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the agency received no comments on the proposed amendments to the regulations for Addiction Professionals. Upon this adoption of the amendments, the agency, if requested to do so by an interested person within 30 days of publication, will issue a concise statement of the principal reasons for accepting or rejecting any comments.

ATTORNEY GENERAL APPROVAL: The adopted regulations for Addiction Professionals were approved for promulgation by the CNMI Attorney General in the above cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153 (e) (to review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 27th day of December, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

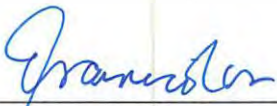


Esther S. Fleming
Executive Director

12/27/21

Date

Filed and recorded by:



Esther R.M. San Nicolas
Commonwealth Registrar

12/27/2021

Date

**SUBCHAPTER 185-10
COMMONWEALTH HEALTH CARE PROFESSIONS LICENSING
BOARD REGULATIONS**

Part 4800- Addiction Professionals

- § 185-10-4801. **Definitions.**
- § 185-10-4805. **Licensing.**
- § 185-10-4810. **Requirements.**
- § 185-10-4815. **Scope of Work**
- § 185-10-4820. **Exemptions.**
- § 185-10-4825. **Examination.**
- § 185-10-4830. **Fees.**
- § 185-10-4835. **Continuing Education.**
- § 185-10-4840. **Restrictions.**
- § 185-10-4845. **Privileged Communication.**
- § 185-10-4850. **Disciplinary Action**

§ 185-10-4801. Definitions.

- (1) **“Act”** refers to the Board’s enabling legislation, codified at 3 CMC §§ 2201–2236.
- (2) **“ADC”** means Addiction Disorder Counselor
- (3) **“Addiction counseling”** means a process involving a therapeutic relationship between a client who is experiencing addiction, dependence or abuse of alcohol or other drugs and a counselor or therapist trained to provide that assistance to address addiction, dependence, or abuse. Addiction counseling includes understanding and application of the limits of the counselor’s own qualifications and scope of practice, including, but not limited to, screening and, as indicated, referral to or consultation with an appropriately licensed healthcare practitioner consistent with the client’s needs. Addiction counseling includes all the following:
 - (a) Clinical intake, assessment, and evaluation
 - (b) Treatment planning
 - (c) Referral
 - (d) Service coordination/case management
 - (e) Counseling, including individual, group, family, and couples counseling
 - (f) Client, family, and community education
 - (g) Documentation
 - (h) Professional and ethical responsibilities
- (4) **“Advertise”** includes, but is not limited to, the issuance of any card, sign or device to any person, or the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper or magazine or in any directory, or any printed matter, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting, the Internet, or any other electronic medium.
- (5) **“Board”** refers to the Healthcare Professions Licensing Board.
- (6) **“Certified Addiction Counselor”** means an individual who meets the requirements of these regulations and is licensed as a certified addiction counselor by the Board.
- (7) **“Clinical supervision”** means the ongoing process in which the supervisor participates with one or more supervisees to ensure high quality service delivery across domains of counselor development, professional and ethical standards, program development, quality assurance, performance evaluation and administration, as described in “Competencies for Substance Abuse Treatment Clinical Supervisors,” Technical Assistance Publication Series No. 21-A, published by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment, or other sources as the Board may specify by regulation.

- (8) **"Continuing education"** means an orderly process of instruction that is approved by an organization or the Board for addiction professionals and designed to directly enhance the practitioner's knowledge, competence, and skill in providing services relevant to his or her occupation.
- (9) **"Counseling"** means techniques and methods used to help individuals learn how to solve problems and make decisions related to personal growth, vocational, environmental, family, social, financial, and other interpersonal concerns.
- (10) **"EMAC"** means Examination for Master Addiction Counselor.
- (11) **"IC&RC"** means International Certification & Reciprocity Consortium
- (12) **"Independent practice of addiction counseling"** means a person who renders for compensation, addiction counseling-related services to an individual, group, organization, corporation, institution, or the public, and who is licensed, trained, or experienced in addiction counseling, and who holds a license issued under this chapter to engage in such services.
- (13) **"Master Addiction Counselor"** means an individual who meets the requirements of these regulations and is licensed as a master addiction counselor by the Board.
- (14) **"NAADAC"** means National Association for Alcoholism and Drug Abuse Counselors
- (15) **"NBCC"** means National Board of Certified Counselors.+
- (16) **"NCAC"** means National Certified Addiction Counselor
- (17) **"NCC AP"** means National Certification Commission for Addiction Professionals.
- (18) **"Practice of addiction counseling"** means the providing of professional services that are delivered by a licensed addiction professional, that are designed to change substance use or addictive behavior, and that involve specialized knowledge, competence, and skill related to addictions and addictive behaviors, including understanding addiction, knowledge of the treatment process, application to practice and professional readiness. The term includes:
 - (a) gathering information through structured interview screens using routine protocols;
 - (b) reviewing assessment findings to assist in the development of a plan individualized for treatment services and to coordinate services;
 - (c) referring for assessment, diagnosis, evaluation, and mental health therapy;
 - (d) providing client and family education related to addictions;
 - (e) providing information on social networks and community systems for referrals and discharge planning;
 - (f) participating in multidisciplinary treatment team meetings or consulting with clinical addiction professionals;

- (g) counseling, through individual and group counseling, as well as group and family education, to treat addiction and substance use disorders in a variety of settings, including but not limited to:
 - (i) mental and physical health facilities; and
 - (ii) child and family service agencies; and
 - (h) maintaining the highest level of professionalism and ethical responsibility.
- (19) **"Practitioner"** means an individual who holds an unlimited license, certificate, or registration; a limited or probationary license, certificate, or registration; a temporary license, certificate, registration, or permit; an intern permit; or a provisional license.
- (20) **"Professional Addiction Counselor"** means a person who renders for compensation, addiction counseling-related services to an individual, group, organization, corporation, institution, or the public, and who is licensed, trained, or experienced in addiction counseling, and who holds a license issued under this Part to engage in the professional practice of addiction counseling.
- (21) **"Registrant"** means an uncertified or unlicensed person who is while completing the requirements for certification or licensure under these regulations, who has completed no less than 12 semester units, or 18 quarter units of the education required under these regulations and who is registered with the Board.
- (22) **"Supervised work experience"** refers to a time during which an applicant provides addiction counseling services directly to clients diagnosed with a substance use disorder, including treatment of clients, and at least fifty percent (50%) of the time consists of providing addiction counseling services directly to clients diagnosed with a substance use disorder. The supervisor(s) must be approved by the Board in advance of applicant providing any addiction counseling services.
- (23) **"Supervisee"** means a registrant or certified or licensed addiction counselor under these regulations who is seeking to meet the supervised experience requirements of these regulations.

§ 185-10-4805. Licensing.

An individual may not engage in the practice of professional addiction counseling unless the person is licensed as a Certified Addiction Counselor (Level I/NCAC I), Certified Addiction Counselor (Level II/NCAC II), or Master Addiction Counselor under these Regulations.

§ 185-10-4810. Requirements.

- (1) The Board shall certify or license, at the appropriate level, as applicable, everyone who the Board determines to meet the criteria outlined below.
- (2) **Certified Addiction Counselor (Level I/NCAC I) licensing requirements.** An individual who applies for licensure as an Addiction Counselor Level I must meet the following requirements:

- (a) Furnish satisfactory evidence to the Board that the individual has:
 - (i) AA Degree or higher with a clinical application, including at least 270 clock hours of substance use disorder related topics, six (6) hours of which must be related to ethics education and training within the last six (6) years and six (6) hours related to HIV/AIDS/Other pathogens education and training within the last six (6) years. If not received with degree, these hours can be obtained as advanced coursework outside of the school setting.
 - (ii) Completed 6,000 hours of supervised work experience or three (3) years full time work in substance use disorders training, with 600 hours being direct client work, prior to taking the examination. Supervisor and supervisee must keep records of the experience and supervision hours. At the end of the supervision period, the supervisor must prepare and forward to the board a written evaluation, including a written evaluation for this credential including written certification of successfully completed supervised hours of substance use disorder training and any hours not successfully completed.
 - (b) Furnish satisfactory evidence to the Board via a state and federal level criminal offender record information search that the individual does not have:
 - (i) convictions of five (5) or more criminal offenses within a 30-month period ending two (2) years or less prior to the date of the Board's determination.
 - (ii) a conviction of a violent felony within three (3) years prior to the date of the Board's determination.
 - (iii) a conviction related to a controlled substance within three (3) years prior to the date of the Board's determination.
 - (c) Furnish satisfactory evidence to the Board that the individual has not been the subject of a disciplinary action by a licensing or certification agency of another state or jurisdiction on the grounds that the individual was not able to practice without endangering the public.
 - (d) A passing score on one (1) of the following exams:
 - (i) NCAC Level One (1) exam through National Certification Commission for Addiction Professionals (NCCAP).
 - (ii) ADC exam through the International Certification & Reciprocity Consortium (IC& RC).
 - (e) Submit a completed application to the Board for review.
 - (f) Pay the fee established by the Board.
- (3) Certified Addiction Counselor (Level II/NCAC II) licensing requirements. An individual who applies for licensure as an Addiction Disorder Counselor Level II must meet the following requirements:

- (a) Furnish satisfactory evidence to the Board that the individual has:
 - (i) received a bachelor's degree or higher in addiction counseling or other allied mental health profession (social work, mental health counseling, psychology), including at least 450 clock hours of substance use disorder related topics, six (6) hours of which must be related to ethics education and training within the last six (6) years and six (6) hours related to HIV/AIDS/Other pathogens education and training within the last six (6) years. If not received with degree, these hours can be obtained as advanced coursework outside of the school setting.
 - (ii) completed 6,000 hours of supervised work experience or three (3) years full time work in substance use disorders training, with 600 hours being direct client work, prior to taking the examination for this credential.
- (b) Furnish satisfactory evidence to the Board via a state and federal level criminal offender record information search that the individual does not have:
 - (i) convictions of five (5) or more criminal offenses within a 30-month period ending two (2) years or less prior to the date of the Board's determination.
 - (ii) a conviction of a violent felony within three (3) years prior to the date of the Board's determination.
 - (iii) a conviction related to a controlled substance within three (3) years prior to the date of the Board's determination.
- (c) Furnish satisfactory evidence to the Board that the individual has not been the subject of a disciplinary action by a licensing or certification agency of another state or jurisdiction on the grounds that the individual was not able to practice without endangering the public.
- (d) A passing score on one (1) of the following exams:
 - (i) National Certified Addiction Counselor Level II exam through National Certification Commission for Addiction Professionals (NCC AP).
 - (ii) EMAC exam through the National Board of Certified Counselors (NBCC).
 - (iii) AADC exam through the International Certification & Reciprocity Consortium (IC & RC).
- (e) Submit a completed application to the Board for review.
- (f) Pay the fee established by the Board.
- (4) Master Addiction Counselor (Level III) licensing requirements. An individual who applies for a license as a Master Addiction Disorder Counselor Level III must meet the following requirements:
 - (a) Furnish satisfactory evidence to the Board that the individual has:

- (i) received a master's degree or higher in addiction counseling or other allied mental health profession (social work, mental health counseling, marriage and family counseling, psychology), including at least 500 hours of substance use disorder related topics, six (6) hours of which must be related to ethics education and training within the last six (6) years and six (6) hours related to HIV/AIDS/Other pathogens education and training within the last six (6) years. If not received with degree, these hours can be obtained as advanced coursework outside of the school setting.
- (ii) completed 6,000 hours of supervised work experience in substance use disorders, with 2,000 hours being direct client work, prior to taking the examination for this credential but after obtaining the master's (or higher) degree.
- (b) Furnish satisfactory evidence to the Board via a state and federal level criminal offender record information search that the individual does not have:
 - (i) convictions of five (5) or more criminal offenses within a 30-month period ending two (2) years or less prior to the date of the Board's determination.
 - (ii) a conviction of a violent felony within three (3) years prior to the date of the Board's determination.
 - (iii) a conviction related to a controlled substance within three (3) years prior to the date of the Board's determination.
- (c) Furnish satisfactory evidence to the Board that the individual has not been the subject of a disciplinary action by a licensing or certification agency of another state or jurisdiction on the grounds that the individual was not able to practice without endangering the public.
- (d) A passing score on one (1) of the following exams:
 - (i) Master Addiction Counselor (MAC) exam through National Certification Commission for Addiction Professionals (NCC AP).
 - (ii) EMAC exam through the National Board of Certified Counselors (NBCC).
 - (iii) AADC exam through the International Certification & Reciprocity Consortium (IC & RC).
- (e) Submit a completed application to the Board for review.
- (f) Pay the fee established by the Board.
- (5) Licensure education requirements
 - (a) All substance use disorders related education accepted for purposes of licensure must be from one of the "Addiction Counseling Competencies" outlined in the Technical Assistance Publication Series No. 21, published by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment.

- (b) All clinical supervisor related education accepted for purposes of licensure must be from one of the “Competencies for Substance Abuse Treatment Clinical Supervisors” outlined in the Technical Assistance Publication Series No. 21A, published by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment.
- (c) All degrees accepted for purposes of licensure must be from one of the following:
 - (i) a higher learning institution located in the United States or a territory of the United States that was accredited on the date of graduation by a regional or national accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or the U.S. Department of Education.
 - (ii) a higher learning institution located in Canada that was in good standing on the date of graduation with the Association of Universities and Colleges of Canada.
 - (iii) a foreign higher learning institution that on the date of graduation was recognized by the government of the country where the school was located as a program to train in the practice of addiction counseling and has maintained a standard of training substantially equivalent to the standards of institutions accredited by a regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or the U.S. Department of Education.
- (d) Applicants with a master’s degree (or higher) that did not emphasize substance use disorders or mental health counseling may complete the course work requirement from an institution that is:
 - (i) accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP);
 - (ii) recognized by NAADAC, the Association of Addiction Professionals (NAADAC) – National Certification Commission for Addiction Professionals (NCC AP);
 - (iii) recognized by the International Certification and Reciprocity Consortium (IC & RC);
 - (iv) accredited by the Commission on Accreditation of Marriage and Family Therapy Education (CAMFTE);
 - (v) accredited by the American Psychological Association's Commission on Accreditation (APA); or
 - (vi) accredited by the Council on Social Work Board (ASWB); or
 - (vii) accredited by the National Addiction Studies Accreditation Commission (NASAC).
- (e) Education and supervised work experience gained outside of the state may be accepted toward the licensure or certification requirements.

- (6) Licensure supervised work experience requirements
- (a) The supervised work experience required must be provided by a qualified and licensed supervisor, as determined by the Board. Prior to the commencement of clinical supervision, a supervisor must comply with all requirements for supervisors as established by the Board by regulation.
 - (b) A doctoral internship may be applied toward the supervised work experience requirement.
 - (c) The supervised work experience requirement may be met by work performed at or away from the premises of the qualified supervisor. However, the supervised work experience requirement may not be performed away from the qualified supervisor's premises if:
 - (i) the work is the independent private practice of addiction counseling; or
 - (ii) the work is not performed at a place that has the supervision of a qualified supervisor.
 - (d) Experience shall be gained only in a setting that meets all the following:
 - (i) Lawfully and regularly provides alcohol and other drug counseling.
 - (ii) Provides oversight to ensure that the supervisee's work at the setting meets the experience and clinical supervision requirements set forth in these regulations and is within the scope of practice for the profession.
 - (iii) Work experience shall not be gained as an independent contractor.
 - (e) The required hours of supervised experience shall be obtained over a period of not less than two (2) years and shall have been gained within the six (6) years immediately preceding the date on which the application for certification or licensure was filed.
 - (f) Experience shall not be credited for more than forty (40) hours in any week.
 - (g) The supervisor and the supervisee shall develop a supervisory plan that describes the goals and objectives of clinical supervision. These goals shall include the ongoing assessment of strengths and limitations and the assurance of practice in accordance with the laws and regulations. The supervisee shall submit to the Board the initial original supervisory plan upon application for licensure or certification.
 - (h) A supervisee must receive an average of at least one (1) hour of direct supervisor contact for every week in which more than ten (10) hours of face-to-face or group counseling is performed in each setting where experience is gained. (No more than five (5) hours of clinical supervision, whether individual or group, shall be credited during any single week.) For purposes of this section, "direct supervisor contact" means one (1) hour of face-to-face contact on an individual basis or two (2) hours of face-to-face contact in a group, of not more than eight (8) persons receiving clinical supervision, addressing the substance of the supervisory plan. The face-to-face contact may also be conducted using a telehealth service provider.

- (i) A supervisee may be either a paid employee or a volunteer. Employers are encouraged to provide fair remuneration to supervisees.
- (j) A supervisee shall not receive any remuneration from patients or clients and shall be paid only by his or her employer. A supervisee shall not have any proprietary interest in the employer's business.
- (k) A supervisee may receive clinical supervision from a person not employed by the supervisee's employer if that person has signed a written agreement with the employer to take supervisory responsibility for the supervisee's substance use disorder counseling and hours of clinical supervision are formally recorded.
- (l) The Board may limit, by regulation, the number of registrants that anyone (1) supervisor may supervise, the number of registrants that may be supervised in any given program or setting, and the proportion of the workforce in any given program or setting, which may be comprised of registrants, or any of these.
- (m) A supervisor must be licensed in the CNMI to oversee the work of a supervisee.

§ 185-10-4815. Scope of Work

(1) Certified Addiction Counselor (Level I/NCAC I)

The Scope of Practice for the category of those with an AA degree include the following activities with clinical supervision from a Master Addiction Counselor/Supervisor (Level III or higher), licensed psychiatrist, clinical psychologist, licensed social worker, or other qualified provider approved by the board. The Certified Addiction Counselor I cannot provide clinical or administrative supervision of staff but can supervise community and social activities.

- (a) Diagnostic impression and Screening, Brief Intervention, Referral to Treatment of SUD (SBIRT).
- (b) Monitor treatment plan/compliance
- (c) Referral
- (d) Service Coordination and case management for SUD
- (e) Psycho-educational counseling of individuals and groups
- (f) Client, Family, and Community Education
- (g) Documentation
- (h) Professional and Ethical Responsibilities

(2) Certified Addiction Disorder Counselor (Level II/NCAC II)

The Scope of Practice for the category of those with a bachelor's degree includes the following activities with clinical supervision of a Master Addiction Counselor/Supervisor (Level III or

higher), licensed psychiatrist, licensed clinical psychologist, licensed social worker, or other qualified licensed provider approved by the board. The Certified Addiction Counselor (Level II/NCAC II) may provide administrative supervision of the Level I Addiction Counselor.

- (a) Screening, Brief Intervention, and Referral to Treatment Referral (SBIRT), Clinical evaluation, including diagnostic impression, screening, and assessment of SUD.
- (b) Treatment Planning for Substance Use Disorders (SUDs) and Co-Occurring Disorders (COD), including initial, ongoing, continuity of care, discharge, and planning for relapse prevention
- (c) Referral
- (d) Service Coordination and case management for SUDs and CODs
- (e) Counseling, therapy, trauma informed care, and psycho-education with individuals, families, and groups
- (f) Client, Family, and Community Education
- (g) Documentation
- (h) Professional and Ethical Responsibilities
- (i) Provide administrative supervision of Category 1 Substance Use Counselor.

(3) Master Addiction Counselor (Level III)

The Master Addiction Counselor typically has a Master or other post graduate degree. The following activities of an unlicensed Master Addiction Counselor will require clinical supervision under a licensed Master Addiction Counselor (Level III or higher), licensed psychiatrist, licensed clinical psychologist, licensed social worker, or other qualified licensed provider approved by the board.

- (a) Clinical evaluation, including screening, assessment, and diagnosis of Substance Use Disorders (SUDs) and Co-Occurring Disorders (CODs)
- (b) Treatment Planning for SUDs and CODs, including initial, ongoing, continuity of care, discharge, and planning for relapse prevention
- (c) Referral
- (d) Service Coordination and case management in the areas of SUDs and CODs
- (e) Counseling, therapy, trauma informed care, and psycho-education with individuals, families and groups in the areas of SUDs and CODs
- (f) Client, Family, and Community Education
- (g) Documentation

- (h) Professional and Ethical Responsibilities
- (i) Clinical supervisory responsibilities for all categories SUD counselors.

§ 185-10-4820. Exemptions.

The Board shall exempt an individual from the requirements set forth in these regulations and grant the individual an applicable license if the individual meets the following requirements:

- (1) Federal or state government employees in job classification of addiction counselor position providing rehabilitation and support services to individuals in mental health, alcohol, or drug abuse facilities, state hospital and treatment facility, division of state mental health services for family and children, or state prison facility. Individuals in this category shall be exempt from having an active license to provide addictions services provided the individual has the training experience and academic degree commensurate with the appropriate scope of work in addiction services (noted in § 185-10-4810) and must be under the supervision of a Licensed Psychiatrist, Licensed Clinical Psychologist, Licensed Social Worker, or other qualified licensed provider approved by the Board; and does not represent himself/herself to be a licensed mental health or professional counselor or associate;
- (2) Individuals working as clinical addictions counselors who possess the minimal training and education commensurate with the appropriate scope of work in addictions services (noted in § 185-10-4810) who are practicing under the supervision of a Licensed Psychiatrist, Licensed Clinical Psychologist, Licensed Social Worker, or other qualified licensed provider approved by the Board; and does not represent himself/herself to be a licensed mental health or professional counselor or associate;
- (3) Individuals providing instructions and/or research in educational institutions;
- (4) Any person who is a duly recognized member of the clergy, provided that the person functions only within the scope of the performance of the ministerial duties of an established and legally recognizable church or denomination and the person performing the services remains accountable to the established authority of the Church or denomination and provided further, that the person does not represent himself/herself to be a licensed mental health or professional counselor or mental health counselor associate;
- (5) Individuals responding to a state emergency declaration.
- (6) Holds a valid certification/licensure as an addiction counselor or addiction therapist from a credentialing agency that is approved by the Board. (e.g. NAADAC or IC & RC).
- (7) Furnishes satisfactory evidence to the Board via a state and federal level criminal offender record information search that the individual does not have:
 - (a) convictions of five (5) or more criminal offenses within a 30-month period ending two (2) years or less prior to the date of the Board's determination.
 - (b) a conviction of a violent felony within three (3) years prior to the date of the Board's determination.

- (c) a conviction related to a controlled substance within three (3) years prior to the date of the Board's determination.
 - (d) Submit a completed application to the Board for review.
 - (e) Pay the fee established by the Board.
- (8) These regulations do not apply to the activities or services of a licensed physician, licensed psychiatrist or a licensed psychologist, or religious leader providing pastoral counseling (remove as this is redundant?) trained in addictions counseling provided that such counseling is within the scope of their duties. These regulations do not apply to school counselors certified by the state education agency providing school counseling within the scope of school counselors.
- (9) The criteria for licensed clinical social workers, marriage & family therapists, or licensed professional counselors require 180 clock hours of substance abuse specific education to include any course with a specific substance abuse/chemical dependence focus. No more than ninety (90) of these hours may be counseling courses without a substance abuse focus. Also required are six (6) hours in confidentiality for substance abuse programs and six (6) hours of substance abuse ethics.
- (10) Nothing in these regulations shall be construed to limit the activities and services of a student, intern, or resident in professional addiction counseling seeking to fulfill educational requirements in order to qualify for a license under these regulations, or an individual seeking to fulfill the post-degree experience requirements in order to qualify for a license under these regulations, if the activities or services are supervised as specified in these regulations, and that the student, intern, or resident is designated by the term "intern" or "resident" or other designation of trainee status. Nothing in this section shall be construed to permit students, interns, or residents to offer their services as professional addiction counselors to any person and to accept remuneration for such professional addiction counseling services other than as specifically exempted in this section, unless they have been licensed under these regulations.
- (11) Nothing in these regulations shall prohibit individuals not licensed under the provisions of these regulations who work in self-help or mutual support groups or programs or not-for profit organizations from providing services in those groups, programs, organizations, or healthcare financing agencies, as long as those persons are not in any manner held out to the public as practicing professional addiction counseling, or do not hold themselves out to the public by any title or designation stating or implying that they are professional addiction counselors.

§ 185-10-4825. Examination.

- (1) The written examinations the Commonwealth of the Northern Marianas Islands recognizes are sponsored by the National Association of Alcohol and Drug Abuse Counselors (NAADAC) and the International Certification and Reciprocity Consortium (IC&RC). The board recognized National and Regional certification boards; National Certification Commission for Addiction Professionals (NCC AP) and the National Boards for Certified Counselors (NBCC).
- (2) An individual who wishes to apply for licensure as an addiction professional must take the corresponding examination.
- (3) An applicant's identity will be kept confidential and test scores are held by the testing board.

185-10 HEALTH CARE PROFESSIONS LICENSING BOARD

- (4) An applicant who fails the examination may take a subsequent examination on payment of the required examination fee. However, an applicant may only take two (2) subsequent examinations within a one (1) year period for a total of three (3) exam in a one-year period.
- (5) An individual who applies for an addiction counselor license under this article may be exempted by the Board from the examination requirement if the individual has met all the following:
 - (a) is licensed or certified as an addiction counselor in another state and has passed a licensing or certifying examination substantially equivalent to the licensing examination required under these regulations;
 - (b) has engaged in the practice of addiction counseling and/or supervision for at least three of the previous five (5) years;
 - (c) has not committed a crime of moral turpitude and has not had any adverse actions taken against them by any licensing board of any jurisdiction and is not under investigation for any act that constitutes a violation of these regulations.

§ 185-10-4830. Fees.

PROFESSION	APPLICATION FEE	INITIAL LICENSE	RENEWAL LICENSE	LATE FEE/LICENSE VERIFICATION
Certified Addiction Counselor (Level I/NCAC I)	\$100	\$100	\$200	\$25
Certified Addiction Counselor (Level II/NCAC II)	\$100	\$100	\$200	\$25
Master Addiction Counselor	\$100	\$100	\$200	\$25

§ 185-10-4835. Continuing Education.

The Board shall prepare or approve the preparation and administration of continuing education programs for licensed addiction counselors under this Act. The Board shall provide by rule for the administration of the continuing education requirements for license renewal under these regulations.

- (1) A person licensed under these regulations must complete at least forty (45) hours of continuing education within the two (2) year period in which the person holds a license as a requirement for the renewal of the license.
- (2) The practitioner shall provide the Board with a sworn statement executed by the practitioner that the practitioner has fulfilled the continuing education requirements required by the Board.
- (3) The practitioner shall retain copies of certificates of completion for continuing education courses for three (3) years from the end of the licensing period for which the continuing education applied. The practitioner shall provide the Board with copies of the certificates of completion upon the Board's request for a compliance audit.

- (4) Following every license renewal period, the Board shall randomly audit for compliance more than one percent (1%) but less than ten percent (10%) of the practitioners required to take continuing education courses.

§ 185-10-4840. Restrictions.

- (1) An individual licensed, registered, or certified under these regulations may engage in the practice of addiction counseling.
- (2) A person who has received a certificate, registration or license under these regulations may use the title "Licensed Addiction Counselor", or "Licensed Master Addiction Counselor" in accordance with the type of certificate, registration or license possessed.
- (3) Unlicensed individuals may not:
- (a) profess to be a licensed addiction professional;
 - (b) use the title(s):
 - (i) "Licensed Addiction Counselor";
 - (ii) "Licensed Clinical Addiction Counselor";
 - (iii) "Licensed Clinical Addiction Therapist";
 - (iv) "Licensed Addiction Therapist";
 - (v) "Addiction Counselor";
 - (vi) "Addiction Therapist";
 - (vii) "Clinical Addiction Counselor";
 - (viii) "Clinical Addiction Therapist";
 - (ix) "Substance Abuse Counselor";
 - (x) "Substance Abuse Therapist";
 - (xi) "Clinical Substance Abuse Counselor";
 - (xii) "Clinical Substance Abuse Therapist"; or
 - (xiii) Any other title containing the words mentioned in (A) – (L).
 - (c) use any other:
 - (i) words;
 - (ii) letters;

- (iii) abbreviations; or
- (iv) insignia; indicating or implying that the individual is a Licensed Addiction Counselor or Licensed Clinical Addiction Counselor; or
- (v) practice as an addiction counselor or clinical addiction counselor for compensation, unless the individual is licensed under this article.

§ 185-10-4845. Privileged Communication.

Breach of a privileged communication, except as provided for in this Article is considered unprofessional conduct and grounds for revocation or suspension of a license.

§ 185-10-4850. Disciplinary Action

The Board shall have the power to impose administrative penalties and/or reprimands; revoke or suspend; refuse to issue, restore, or renew, the license of any person who is found to have violated one or more of the provisions enumerated in § 2224 of P.L. 15-105 and sections 185-10-901 through 185-10-1301.



COMMONWEALTH ZONING BOARD

2nd Floor Joeten Dandan Building
Caller Box 10007, Saipan, MP 96950 Tel. 670-234-9661, FAX 234-9666
E-mail zoningboard@cnmizoning.com

Francisco Aguon, Vice-Chairman
Kevin Guerrero, Secretary
Shayne Villanueva, Member
Geraldyn DelaCruz, Zoning Administrator
Perry Inos, Jr., Treasurer
Edna Nisola, Member
Cecilia Taitano, Member

Public Notice of Proposed Zoning Regulations

Notice of Intended Action: The Zoning Board hereby approves the publication of the following proposed regulations. The Zoning Board intends to adopt these regulations, pursuant to the Administrative Procedure Act, 1 CMC § 9104(a). If adopted, these regulations will become effective ten days after publication of a Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

Authority: These regulations are promulgated under the authority of 2 CMC § 7221(d), which requires the Zoning Board to promulgate regulations to carry out the intent and purposes of the Zoning Code of the Commonwealth of the Northern Mariana Islands; pursuant to Section 309 of the Saipan Zoning Law of 2013, 10 CMC § 3511, which authorizes the Board to administer and enforce it and to promulgate regulations to carry out its intents and purposes; and Section 30504 of the Nuisance Abatement and Blighted Property Maintenance Act of 2018 which authorizes the Zoning Administrator to enforce its terms and promulgate regulations in furtherance thereof.

Terms and Substance: These proposed regulations specify enforcement priorities, impose fines and fees, and detail the manner in which notice of enforcement activity will be given and appeals will be taken. On December 18, 2019, the Zoning Board voted to publish these proposed regulations for comment.

Directions for Filing and Publication: These proposed amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

Comments: Interested parties may submit written comments on the proposed regulations to Geraldyn C. DelaCruz, Zoning Administrator, via U.S. mail to Caller Box 10007, Saipan, MP 96950, or via email to geri.delacruz@cnmizoning.com. Comments, data, views, or arguments are due within 30 days from the date of publication of this notice. 1 CMC § 9104(a)(2).


Submitted by: _____
Geraldyn C. DelaCruz
Zoning Administrator

Date: 12/1/2021

Received by: _____
Mathilda A. Rosario
Special Assistant for Administration

Date: 12/21/21

Filed and Received by:



Esther R.M. San Nicolas
Commonwealth Registrar

Date: 12.27.2021

I certify pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.



EDWARD MANIBUSAN
Attorney General

Date: 12/27/2021



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Cecilia Taitano, Member
Geraldyn Delacruz, Zoning Administrator

Arongorongol Toulap reel Pommwol Mwóghutughutúl Zoning

Arongorong reel Mángemángil Mwóghut: Zoning Board re átirowa akkatééwowul pommwol mwóghutughut ikka e amwirimwiritiw. Zoning Board re mángemángil rebwe adóptááilil mwóghutughut kkal, sángi Administrative Procedures Act, 1 CMC § 9104(a), Ngáre re adóptááli, ebwe bwunguló mwóghutughut kkal llól seigh ráál mwiril aal akkatééwowul Arongorongol Adóptaa me llól Commonwealth Register. 1 CMC § 9105(b).


Bwángil: Ebwe arongowow mwóghutughut kkal faal bwángil 2 CMC § 7221 (d), iye e tipáli Zoning Board rebwe arongawow mwóghutughut kkal reel ebwe toowow mángemáng me bwulul Zoning Code-il Commonwealth Téél Falúw kka Eláing llól Marianas; sángi Tálil 309 reel Alléghúl Zoning sángi Seipél reel 2013, 10 CMC § 3511, iye e ayoorai bwángiir Board reel rebwe aghatchú mwóghutughutúl me ayoorai alléghúl me rebwe bwal arongawow mwóghutughut kkal reel mángemángil me bwulul; me Tálil 30504 reel Nuisance Abatement me Blighted Property Maintenance Act-il 2018 iye e ayoorai bwángiir Zoning Administrator bwe ebwe isiisow kkapasal me arongawow mwóghutughut kkal me faráághil.

Kkapasal me Aweewel: E lo pommwol mwóghutughut kkal reel ebwe ffat enforcement priorities, ebwe ffat óbwóss me mwutta, me ebwe ffat mwóghutughutúl yeel llól arongorongol enforcement activity ebwe isiisow me rebwe bweibwogh atiiwliigh.


Wóól Tumwur 18, 2019, Zoning Board re botali bwe ebwe akkatééwow pommwol mwóghutughut kkal ngáli kkapas ngáre comments.

Afal reel Ammwelil me Akkatééwowul: Ebwe akkatééwow pommwol liiwel kkal me llól Commonwealth Register llól tálil pommwol me ffél mwóghutughut ikka rá adóptááilil (1 CMC § 9102(1)) me ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch (1 CMC § 9104(a)(2)).

Kkapas: Schóó kka re mwuschel isiisilong ischil mángemáng wóól pommwol liiwel kkal rebwe isch ngáli Geraldyn C. Delacruz, Zoning Administrator, via U.S. mail ngáli Caller Box 10007, Saipan, MP 96950, ngáre via email ngáli geri.delacruz@cnmizoning.com. Kkapas, data, views, ngáre angiiingi ebwe toolong llól eliigh ráál mwiril aal akkatééwow arongorong yeel. 1 CMC § 9104(a)(2).


Isáliyalong: 
Geraldyn C. Delacruz
Zoning Administrator

Ráál: 12/1/2021

Bwughiyal: 
Mathilda A. Rosario
Special Assistant ngáli Administration

Ráál: 12/2/21

Ammwelil:



Esther R.M. San Nicolas
Commonwealth Registrar

Ráál:

12/27/2021

I átirow, sáangi l CMC § 2153(e) me l CMC § 9104(a)(3), bwe l ya amwuri físchiiy me átirowa mwóghutughut kkal bwe aa fíil reel fféerúl me legal suíficiency.



EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

Ráál:

12/27/2021



COMMONWEALTH ZONING BOARD

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Shayne Villanueva, Member

Cecilia Taitano, Member

Geralyn DelaCruz, Zoning Administrator

NUTISIAN PUPBLIKU PUT I MAPROPONI NA REGULASION ZONING SIHA

MA'INTENSIONA NA AKSION: I Kuetpun Zoning guini pã'gu ha aprueba i publikasion i tinattiyi na manmapropo ni na regulasion siha. I Kuetpun Zoning ha intensiona para u adãpta esti na regulasion siha, sigun para i Åkton Administrative Procedure, 1 CMC § 9104(a). Yanggin ma'adãpta, esti na regulasion siha siempri mu ifektibu gi hãlum dies dihas dispues di publikasion i Nutisian i Adãptasion gi hãlum i Rehistran Commonwealth. 1 CMC § 9105(b).

ÅTURIDÅT: Esti i regulasion siha manmacho'gui pãpa aturidãt i 2 CMC § 7221 (d), ni ha fuetsao i Kuetpun Zoning para u cho'gui i regulasion para u kinãtga huyung i intensiona yan i rason i Zoning Code i Commonwealth gi Sangkattan na Islas Mariãnas; sigun para Seksion 309 Lain Zoning giya Sa'ipan disdi 2013, 10 CMC § 3511, ni aturisa i Kuetpu para u gubietna yan aplika yan para u cho'gui i regulasion siha para u kinãtga huyung i ma'intensiona yan i rason siha; yan Seksion 30504 gi Nuisance Abatement yan Åkton Blighted Property Maintenance desdi 2018 ni ma'aturisa i Atministradot Zoning para u ma'aplika i tema yan macho'gui i regulasion siha mo'na.

I TEMA YAN I SUSTÅNSIAN I PALÅBRA SIHA: Esti i manmapropo ni na regulasion siha ha klaruyi na u manaf'o'na umaplika, mapegãyi pena yan mamutta, ya manaklãru i maneran nutisian i aktibidãt nu i "enforcement" ngai'an para u manahuyung yan para u machuli' i apela.


Gi Disembri 18, 2019, i Kuetpun Zoning mabota para u mapublika esti i manmapropo ni na regulasion siha para upiõn.

DIREKSION PARA U MAPO'LU YAN PUPBLIKASION: Esti i manmapropo ni na amendasion siha debi na u mapublika gi halum i Rehistran Commonwealth gi halum i seksiona ni mapropo ni yan nuebu na ma'adãpta na regulasion siha gi (1 CMC § 9102(a)(1)) yan u mapega gi mangkumbinienti na lugãt siha tãtkumu i civic center yan i ufisinan gubietnu siha gi kada distritun senadot, kuntodu fino' English yan i dos na linguãhin natibu. (1CMC§ 9104(a)(1)).


OPIÑON SIHA: I manintires na pãttidã siha siãna muna'halum tinigi' upiõn put i mapropo ni na regulasion siha para guatu as Geralyn C. DelaCruz, Atministradoran Zoning, via U.S. mail para Caller Box 10007, Saipan, MP 96950, pat via email para as geri.delacruz@cnmizoning.com. I upiõn, data, views, pat testimoñon kinentra siha debi na u manahalum gi hãlum trenta (30) dihas ginin i fetchan publikasion nu esti na nutisia. 1 CMC § 9104(a)(2).

Nina'halum as:
Geralyn C. DelaCruz
Atministradoran Zoning

Fetcha: 12/1/2024

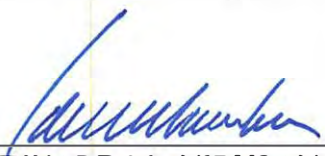
Rinisibi as: 
Mathilda A. Rosario
Ispeziât na Ayudânti Para Atministrasion

Fetcha: 12/21/21

Pine'lu yan
Ninota as: 
Esther R.M. San Nicolas
Rehistran Commonwealth

Fetcha: 12.27.2021

Hu settifika, sigun para 1 CMC § 2153(e) yan 1 CMC § 9104(a)(3), na hu ribisa yan aprueba esti na regulasion siha kumu fotma yan ligât na sufisienti.


EDWARD MANIBUSAN
Abugâdu Henerât

Fetcha: 12/27/2021

Nuisance Abatement and Blighted Property Maintenance Act of 2018

SLL 20-25

§165-30.1-700 Purpose

It is hereby recognized that existence of abandoned and significantly dilapidated, damaged, unrepaired, unmaintained structures with nuisance surroundings can adversely impact the property values of abutting properties and the immediate neighborhood or the entire community. These blighted properties can threaten the health, safety, and welfare of residents and business operations. The regulations in this part provide for and impose conditions upon the issuance of notices for the violations of conditions in the Nuisance Abatement & Blighted Properties Maintenance Act of 2018.

The regulations in this part are additive and supplement the other regulations and provisions in this title and the Zoning Law. In the event of any conflict with any other provision of law or regulation, the more restrictive provision shall prevail.

§165-30.1-701 Definitions

When used in the regulations in this subchapter the following terms shall have the respective meanings:

- (a) “the Act” means the Nuisance Abatement and Blighted Property Maintenance Act of 2018.
- (b) “Property” means a structure, land or premises.
- (c) “Public property” means government property.
- (d) “Residential” means a single-family dwelling.
- (e) “Non-Residential” means commercial or industrial use, or any use that is not a single-family dwelling.
- (f) “Compliance Plan” means a plan of action from the property owner and/or violator in addressing the Notice to Abate.

§165-30.1-702 Notice

Notice to Abate shall be posted on the premises where the public nuisance exists and shall also be advertised in at least one newspaper twice during a fifteen (15) day period. Copies shall be mailed to the owner of record as defined in the Act. All notices shall conform to the requirements set forth in **10 CMC §30510** and shall provide 60-90 days remove the noticed nuisance and / or abate the noticed blight.

§165-30.1-703 Historical Buildings

- (a) A property owner may apply for a "mothballing certificate" for any historical structure that would otherwise be considered blighted or a nuisance under the Act. If a mothballing

certificate is authorized pursuant to the Act the Administrator may grant it for a term of one year. Any extensions to the term shall be justified in writing 30 days prior to the expiration date. Failure to do so shall subject the owner with the standard penalty fees stated within this regulation.

(b) Where Property will be vacant or unattended, the respective Property owner shall register to leave their properties or buildings unattended for up to 3 months and shall comply with the preservation and maintenance set for in the Act and/or this regulation. After such time, owners shall comply with all procedures to maintain their properties as required.

§165-30.1-704 Enforcement Process

(a) Issuance of a Notice of Violation. When the enforcement division observes a blighted Property or a property deemed a public nuisance pursuant to 10 CMC §30506 a violation notice shall be issued and noticed in accordance with Subsection 702 of these regulations.

(b) Enforcement Priorities. While all violations are subject to enforcement, the Zoning Office's enforcement resources will be allocated in the following order of importance.

(1) Properties within sight of Main thoroughfares.

(2) Properties within 50 to 100 feet of a school, playground, or daycare.

(3) Properties within view of tourist concentrated areas including without limitation, Beach Road zoning district, Tourist Resort zoning district, Garapan East zoning district, and Garapan Core zoning district.

(c) Types of Violations

(1) Courtesy Notice. Initial reports of minor property violations will prompt a Courtesy Notice that describes the alleged violation. No inspection of the property is conducted. The property owner will be given time to respond (90 days for residential or 60-days for non-residential) and may certify that the violations are unfounded or have been corrected by returning the Property Owner Certification form with photographs. By signing the Owner Certification form, the owner also agrees to maintain the property in the future without additional notices. If another complaint is received regarding the same or similar violation and it is verified through inspection by Zoning Enforcement, an immediate fee assessment will be charged and a Notice of Violation will be issued. Additional fees will be assessed if the violation is uncorrected at the end of the 60- or 90-day deadline (see Schedule of Fines schedule).

(2) Notice of Violation. When a violation is verified by Zoning Enforcement, a Notice of Violation shall be issued. The Notice of Violation shall include a list of violations and corrections that must be made within a specified timeframe. The Notice shall be posted on the Property and shall advise the property owner to contact the Zoning Office to discuss the violations and the necessary steps to abate the violations. If, there is no response from the property owner, or the violations are not corrected within the deadline for compliance, the Zoning office may proceed to contract for the maintenance and security of the Property (which may require obtaining an Inspection Warrant). Fee assessments will apply for noticing, warrants, contracts etc. If the

Property is cleaned or improved by the Zoning Office or the Commonwealth government, a posting "Cleaned by Zoning" with a date will be displayed on the property with contact information to report blight.

(3) Notice of Repeat Violation. When the same or similar violation has been verified within 24 months with respect to the same Property, the property owner will immediately be assessed a fee and allowed 10 days to correct the violations. If the violation is not corrected a re-inspection notice will be issued (unless the issue is blight and Zoning Enforcement exercises its power to contract for property maintenance in which case Zoning will post the property as blighted and proceed with maintenance contracting). Non-compliance will accrue additional fees.

(4) Notice to Abate Habitability. If after re-inspection(s) it is determined that the violations still exist or are unabated, the property owner will receive this Order to Abate with timelines for permits, final inspections, and removal of blight conditions. The property owner has 10 days to respond before Zoning takes further action to abate the violation. A Compliance Plan, may be required. The Compliance Plan must be approved by the Zoning Administrator. Non-compliance will accrue fee assessments.

(5) Public Nuisance. Hazardous and unsafe conditions including landslides, structural, electrical, plumbing, mechanical damage, may trigger the most stringent enforcement action of declaring the property a Public Nuisance and assessing penalties and citations. If, after, re-inspection (s) it is determined that the premises remain deteriorated and health and safety violations remain unabated and the Property is still deemed as Public Nuisance, a new Notice to Abate will be issued and Administrative fines will be assessed. The property owner will be given 10 days to respond before Zoning takes further action to abate. A Compliance Plan may be required. The Compliance Plan must be approved by the Zoning Administrator. Non-Compliance will accrue fee assessments and civil penalties.

§165-30.1-705 Mitigation of Imminent Hazard

Whenever a building, structure, portion thereof, or real property is in such immediately dangerous condition due to the existence of or to the perilous risk to the health and welfare of the tenants, property owners and the community, Zoning may take immediate action that can include vacating the premises and abatement by contractors of dangerous conditions or defects. Noncompliance will accrue fee assessments and civil penalties.

§165-30.1-706 Foreclosed and Vacant Registration Program

Unsecured, blighted properties are an attractive nuisance for trespassers and illegal dumping. Banks and other lenders are responsible for maintaining properties while in foreclosure, and must post property management contact information in the front window of the Property. The Property must remain clear of trash and debris and must be secured. The Property must be registered with Zoning pursuant to section [x] of these regulations. Registration of the property includes a registration fee, an inspection report and maintenance plan. If the property is not registered within 30 days of foreclosure, it is subject to assessment of citations

§165-30.1-707 Appeal Process

Appeals from orders of the Administrator may be made in accordance with the provisions of the Commonwealth Administrative Procedures Act. Within 30 days after the date of mailing the order, or other service, including posting, as provided in Sections 702 and 704, the owner of the Property involved shall have the right to make an appeal for a hearing before the Zoning Board. Thereafter, the Board shall promptly arrange a time for the hearing pursuant to the Commonwealth Administrative Procedure Act, 1 CMC 9101-9115.

§165-30.1-708 Reporting Suspected Violations

Any resident or member of the public may report a suspected violation of this law. Written complaints shall be submitted on a form prescribed by the Administrator. In the absence of a written complaint, Zoning may inspect and initiate an investigation of a possible violation of this law.

§165-30.1-709 Requests for Extension

Requests for extension of the time period established for abatement shall be submitted in writing no later than 15 days before expiration, may be approved by the Zoning Administrator. Any decision shall be made in writing to the requestor. In the event a request for extension is not given in writing within such 15day timeframe it shall be deemed denied which shall mean that the owner shall be responsible to comply with the notice/order to abate on the original deadline.

§165-30.1- 710 Fines

(a) Violations of the provisions of the Act and / or these regulations shall be punishable by a civil penalty as stated in SCHEDULE OF FINES for each day such violation(s) exist and continue beyond the date required for remediation set forth in the notice of violation issued under Section 704. When a warning is issued and is not acted upon, penalties shall begin to accrue from the date of the first warning. A first offense shall be subject to a minimum \$200.00 fine and any other penalties authorized under CNMI law. Second and subsequent offenses shall be subject to penalties up to \$1,000 per day and any other penalties authorized under CNMI law. Each day of violation shall constitute a separate offense. (see fee schedule)

(b) Violators will also be responsible for all costs and expenses associated with enforcement and the collection of any civil penalties, which shall include, but shall not be limited to attorney fees (even if the Zoning Office is represented by counsel appointed or provided by the Attorney General), court costs, mailing costs ,and filing fees. Additionally, any Owner/Occupant who, after receiving notice of violation pursuant to Section 702 or 704 and after 15 days' notice continues to violate the provisions of this Act, such Owner/Occupant shall be fined by the

Commonwealth the maximum allowed by law, as the same may be amended from time to time, for each day for which it can be shown based on actual inspection of the property on each such day, that the Blighted Premises continue to exist after written notice to the Owner/Occupant as provided herein and the expiration other time to remediate.

(c) Any Owner/Occupant who does not deliver or mail written demand for a hearing within fifteen (15) days of the date of the Notice to Abate, shall be deemed to have admitted liability, and the Administrator shall certify that such Owner/ Occupant had failed to respond. The civil penalties, fines, costs and/or fees provided for by Act shall be assessed in full.

§165-30.1-711 Schedule of Fines

	VR, VC, Others		GC, GE, BR, TR		Located along Primary Roads *	Per day	Days	
	1st Violation	2nd Violation	1st Violation	2nd Violation		After Deadline	Deadline	courtesy
Residential	\$200.00	\$450.00	\$500.00	\$750.00	plus \$150	\$750.00	3	1
Non-Residential	\$500.00	\$750.00	\$750.00	\$1,000.00	plus \$300	\$1,000.00	5	1

**** calculated as 50% of total amount of penalty *** calculated as 75% of total amount of penalty**

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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<p>In Re the Matter of:</p> <p>Yantao Xia,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>Chinese Bible Church International Inc. dba Eucon International School,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 20-027</p> <p>ADMINISTRATIVE DECISION DISMISSING COMPLAINT</p>
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On November 23, 2021, the parties filed a stipulated motion to dismiss pursuant to a global settlement of this matter and a related lawsuit filed in the U.S. District Court, which approved the settlement terms. "A complaint may be dismissed upon its abandonment or settlement by the party or parties who filed it." NMIAC § 80-20.1-485. Upon review, the undersigned finds there are no other issues in contest and hereby **GRANTS** the parties' stipulated motion to voluntarily dismiss this case pursuant to NMIAC § 80-20.1-485(b). This matter is **DISMISSED** and any pending deadlines or hearings are hereby **VACATED**.

So ordered this **24th** day of November, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:) **Labor Case No. 21-018**
) **Compliance Agency Case No. 21-005-09**
Edwin Bryan T. Mendoza, Jr. and)
CNMI Department of Labor,)
)
Complainants,)
) **ADMINISTRATIVE DECISION**
v.)
)
Saipan Golden Bridge Services Corporation)
)
Respondent.)

I. INTRODUCTION

This matter came for an Administrative Hearing on July 29, 2021, September 8, 2021, and October 20, 2021 at 9:00 a.m. at the Administrative Hearing Office. Complainant Edwin Bryan T. Mendoza, Jr. (“Complainant”) was present and self-represented. Respondent Saipan Golden Bridge Services Corporation (“Respondent”) was present and represented by Jia Jun Li. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was present and represented by Labor Law Enforcement Specialist III Arlene Rafanan.

Witnesses:

1. Josephine Tengco

Admitted Exhibits:

1. Complaint Form and Supporting Documents, filed January 12, 2021;
2. Answer Form, filed January 18, 2021;
3. Labor Case Determination, filed April 8, 2021;
4. Compliance Agency Case Determination, filed October 12, 2021;
5. Respondent’s Total Workforce Listing, signed August 30, 2021;
6. Respondent’s Workforce Plan, signed August 30, 2021;
7. Respondent’s Personnel Records;
8. Respondent’s Employee Handbook, filed September 17, 2021; and
9. Complainant’s Resume, filed July 21, 2021.

II. BACKGROUND

1 On January 12, 2021, Complainant filed the above-captioned labor complaint for a
2 violation of the employment preference laws. Upon review and consideration, the labor case was
3 referred to Enforcement pursuant to 3 CMC § 4940 and NMIAC § 80-20.1-470 for further review
4 and investigation. On October 12, 2021, Enforcement filed an updated Determination and Notice
5 of Violation for various violations, Compliance Agency Case No. 21-005-09, related to the labor
6 case complaint. Pursuant to NMIAC § 80-20.1-470(g), LC-21-018 and CAC-21-005-09 were
7 consolidated, effective October 20, 2021.

III. JURISDICTION

8
9 “The Administrative Hearing Office shall have original jurisdiction to resolve all actions
10 involving alleged violations of the labor and wage laws of the Commonwealth, including but not
11 limited to any violation of this chapter and regulations promulgated thereunder.” 3 CMC § 4942.
12 The Employment Rules and Regulations further provide:

13 The Administrative Hearing Office shall have jurisdiction over
14 complaints filed with the Administrative Hearing Office by **U.S.
15 Citizens, CNMI permanent residents or U.S. permanent residents,**
16 and agency complaints filed by the Department, with respect to
17 violations of the requirements of job preference and workforce
participation pursuant to the Commonwealth Employment Act of 2007,
as amended, and other violations of labor laws application in the
Commonwealth. ...

18 The Administrative Hearing Office shall have jurisdiction over
19 complaints filed with the Administrative Hearing Office by **foreign
20 national workers,**¹ and agency complaints filed by the Department,
21 with respect to violations of Commonwealth law and regulations
regarding employment and other labor laws applicable in the
Commonwealth. ...

22 The Administrative Hearing Office shall have jurisdiction over
23 complaints filed with the Administrative Hearing Office by other
24 **nonimmigrant aliens**² with respect to violations of Commonwealth
25 law and regulations regarding employment.

26 ¹ “Foreign national worker’ means a person who is not a United States citizen, a United States permanent resident, a
27 CNMI permanent resident, or an immediate relative of the United States citizen or a United States permanent resident,
28 or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant prior to
November 28, 2010 for the declared purpose of being employed in the Commonwealth.” NMIAC § 80-20.1-080(k).

² “Nonimmigrant alien’ means a person described in Section 101(a)(15) of the Immigration and Nationality Act, 8

1 NMIAC § 80-20.1-450(b)(1)-(3) (emphasis added).

2 **IV. FINDINGS OF FACT**

3 In consideration of the evidence provided and credibility of witness testimony, the
4 undersigned issues the following findings of fact:

- 5 1. Complainant is a U.S. citizen and resident of Saipan. Complainant has more than two
6 years of experience working as an Assistant Bar Manager at GIG Partners Inc., dba GIG
7 Discotheque & Bossano Bar. Additionally, Complainant has an additional four years of
8 experience working as a Bartender at other locations. Prior to bartending, Complainant
9 worked as a transfer guide, construction helper, and in sales.³
- 10 2. Respondent is a company operating the West Coast Restaurant in Susupe, Saipan. In
11 preparation for its opening in January 2021, Respondent was seeking to hire wait staff,
12 bartenders, and dishwashers.
- 13 3. Complainant heard that Respondent was hiring. On or around January 2, 2021,
14 Complainant dropped off his resume and met with the manager.
- 15 4. Based on his experience, Complainant was qualified to work as a wait staff, bartender, or
16 dishwasher.
- 17 5. Subsequently, Complainant was interviewed, hired as a dishwasher, and asked to report
18 back to the restaurant on or around January 3, 2021 to discuss working hours and
19 schedule.⁴ The dishwasher position was paid at a rate of \$7.25 an hour.
- 20 6. Complainant reported for work on January 3, 2021 when he was informed that the
21 Respondent, through its Manager Jia Jun Li, rescinded the job offer.
- 22 7. Respondent relied on a “policy” against hiring family members to justify their decision in
23 rescinding Complainant’s job offer. Respondent continued to rely on and reiterate said
24 policy in their answer, investigation, and early testimony of the manager and supervisor,
25 Josephine Tengco.⁵ Only after being subpoenaed for a copy of the written policy did
26 Respondent recant their testimony and state that no such policy exists.⁶

27 _____
U.S.C. 1101(a)(15).” NMIAC § 80-20.1-080(p).

28 ³ Exhibit 9.

⁴ See Complaint and Answer.

⁵ See Answer and Determination.

⁶ Exhibit 8.

- 1 8. Respondent falsified a policy and reason to justify the decision to rescind Complainant's
2 job offer.
- 3 9. Respondent had no other reason or just cause not to hire or retain Complainant.
- 4 10. Respondent proceeded to hire foreign workers to fill his openings for a bartender,
5 waitstaff, and dishwashers.⁷ Notably, the start dates based on the supervisor's testimony
6 and the start dates listed on the Total Workforce Listing do not match.
- 7 11. Respondent was subpoenaed to submit the following documents:
- 8 a. Job vacancy announcements posted for Respondent pursuant to NMIAC § 80-
9 20.1-225;
- 10 b. Required Records to pursuant to 3 CMC § 4967 and NMIAC § 80-20.1-501, such
11 as:
- 12 i. Personnel records for each foreign national worker;
- 13 ii. Payroll records for each foreign national worker;
- 14 iii. Receipts for cash payments, cancelled checks or deposit records of
15 payment of wages and overtime for each foreign national worker; and
- 16 iv. Documentations for each foreign national worker including USCIS
17 notices, employment contracts, police clearances, health certificates, and
18 tax payment records;
- 19 c. Respondent's Total Workforce Listing since 2020 pursuant to NMIAC § 80-20.1-
20 505;
- 21 d. Respondent's Workforce Plan since 2020 pursuant to NMIAC § 80-20.1-510; and
- 22 e. Respondent's written employment policies or standard operating procedures.
- 23 12. Respondent was ordered to provide the above-stated documents on or before September
24 3, 2021. Respondent did not provide records and Respondent was again ordered to submit
25 the documents by September 17, 2021.
- 26 13. Respondent failed to maintain and timely submit all the required records. Specifically:
- 27 a. Respondent submitted an incomplete total workforce listing. Respondent failed to
28 submit the total workforce listing from first and second quarter of 2021.
- b. Respondent submitted an incomplete total workforce plan.

⁷ Exhibit 5.

- c. Respondent failed to submit personnel records for four (4) employees.
 - d. Respondent failed to submit any payroll records.
 - e. Respondent documentation for each foreign national worker was incomplete.
 - f. Respondent did not provide any job vacancy announcements.
14. Respondent did not post any job vacancy announcements. Instead, Respondent relied on a service agreement with a manpower agency, Blue Eagle Enterprises, LLC. The job vacancy announcements posted by Blue Eagle Enterprises did not match the O-net classifications, job titles, pay, or start date for all the foreign workers hired.
 15. Respondent failed to make a good faith effort to hire U.S. citizens, U.S. permanent residents, or CNMI permanent residents.
 16. On January 12, 2021, Complainant filed a labor case against Respondent for a violation of the CNMI employment preference laws and discrimination.
 17. On January 18, 2021, Respondent filed an Answer stating that they hired a U.S. citizen. Again, this statement is inconsistent with Respondent's filings and testimony as multiple foreign workers are listed in the Total Workforce Listing.⁸
 18. On January 25, 2021, the undersigned referred this matter to Enforcement for further investigation pursuant to NMIAC § 80-20.1-470.⁹
 19. On April 8, 2021, Enforcement submitted a Determination finding a violation of the CNMI employment preference laws and recommended damages to be paid to Complainant.
 20. Administrative Hearings were held and continued on July 29, 2021 and September 8, 2021 due to incomplete documents and the parties' need for additional time to prepare.
 21. On October 12, 2021, Enforcement initiated a Compliance Agency Case against Respondent for additional violations.
 22. Pursuant to NMIAC § 80-20.1-470(g), Complainant's labor case and Enforcement's compliance case against Respondent were consolidated.
 23. The last hearing for the above-mentioned consolidated cases was held on October 20, 2021.

⁸ Exhibit 5.

⁹ See Referral and Scheduling Order.

1 24. The numerous inconsistencies in Respondent’s filings, answers during the investigation,
2 and testimonies at the hearing diminished their credibility and weight of evidence.

3 **V. CONCLUSIONS OF LAW**

4 In consideration of the above-stated findings and applicable law, the undersigned issues the
5 following conclusions of law:

6 **1. Respondent failed to post a Job Vacancy Announcement.**

7 “Any employer seeking permission to employ workers other than citizens or CNMI
8 permanent resident and US permanent residents shall utilize the [Department website].” 3 CMC
9 § 4522. Further, the regulations provide, “an employer who intends to employ a foreign national
10 worker, transitional worker, or nonimmigrant alien on a full-time basis (under any new
11 employment arrangement, any renewal of any existing employment arrangement, or any transfer)
12 *must* post a job vacancy announcement on the Department’s website, www.marianaslabor.net.”
13 NMIAC § 80-20.1-255(a) (emphasis added). Notably, “there are *no waivers* available with
14 respect to the job vacancy announcement requirement,” and the applicable regulations apply
15 regardless of whether a company employs workers from a manpower agency. NMIAC § 80-20.1-
16 255(e); *see also* NMIAC § 80-201.-230 (Employer Registration).

17 Here, Respondent not only intended on hiring foreign workers, he employed 10
18 Commonwealth-Only Transitional Workers (“CW-1”) throughout the year 2021.¹⁰ When
19 Respondent was subpoenaed for a copy of any and all job vacancy announcement posted by or
20 on behalf of Respondent in connection to this case—Respondent failed to provide any job vacancy
21 announcements. Further, Respondent testified and confirmed that Respondent was not a
22 registered employer at the time CW-1 were employed and did not post any job vacancy
23 announcements. Instead, Respondent relied on a manpower agency to employ workers. However,
24 hiring from a manpower agency does not absolve Respondent’s requirement and responsibility to
25 post a job vacancy announcement. Considering that Respondent hired 10 full-time foreign
26 workers without posting a job vacancy announcement for said position, Respondent violated this
27 the job vacancy announcement requirement ten times.

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¹⁰ Exhibits 5-7.

1 **2. Respondent failed to adhere to the 30% Workforce Objective**

2 Section 4525 states, “[i]n the full-time workforce or any employer, the percentage of citizens,
3 U.S. permanent residents, and CNMI permanent residents and their immediate relatives employed
4 shall equal or exceed the percentage of citizens, U.S. permanent residents, and CNMI permanent
5 residents and their immediate relatives in the available private sector workforce unless attainment
6 of this goal is not feasible within the current calendar year after all reasonable efforts have been
7 made by the employer.” 3 CMC § 4525. “The current percentage specified by the Department ...
8 is 30%.” NMIAC § 80-20.1-210(c)(3).¹¹

9 Notably, Respondent gave conflicting testimony of the number and type of employees at West
10 Coast Restaurant. To some extent, Respondent did not know how many employees he has or had,
11 nor the status each employee held. However, upon review of Respondent’s total workforce listing
12 and available evidence,¹² Respondent certified, under penalty of perjury, that there are a total of
13 10 full time workers – only two of which is a U.S. citizen. The workforce participation objective
14 requires that 30% of Respondent’s full time work force be U.S. citizen, U.S. permanent residents,
15 and CNMI permanent residents. While 30% percent of 10 employees is 3 employees, Respondent
16 only employs two full-time U.S. citizen. Accordingly, Appellant does not meet the workforce
17 participation requirement under 3 CMC § 4525.

18 **3. Respondent violated the CNMI Employment Preference law.**

19 “Citizens and CNMI permanent residents and U.S. permanent residents shall be given
20 preference for employment in the Commonwealth.” 3 CMC § 4521; *see also* NMIAC § 80-20.1-
21 101 (“It is the policy of the Commonwealth that citizens, CNMI permanent residents and U.S.
22 permanent residents shall be given preference for employment in the private sector workforce in
23 the Commonwealth. . . .”). “A citizen or CNMI permanent resident or U.S. permanent resident
24 who is qualified for a job may make a claim for damages if an employer has not met the
25 requirements of 3 CMC § 4525, the employer rejects an application for the job without just cause,
26 and the employer employs a person who is not a citizen or CNMI permanent resident or U.S.

26 ¹¹ This provision, however, “shall not apply to employers of fewer than five employees, provided however, the
27 Secretary may, by regulation, require each business to have a least one employee who is a citizen or CNMI permanent
28 resident and U.S. permanent resident, or remove the exemption available to employers against whom two or more
judgments are entered in Department proceedings in any two-year period. “No waivers are available with respect to
the workforce participation objective.” NMIAC 80-20.1-210(f).

¹² Exhibit 5.

1 permanent resident for the job.” 3 CMC § 4528(a); *see also* NMIAC § 80-20.1-455(f) (“Any
2 citizen, CNMI permanent resident, or U.S. permanent resident who is qualified for a job, as
3 described in a job vacancy announcement, may file a complaint making a claim for damages if
4 an employer rejects an application for the job without just cause and the employer employs a
5 person who is not a citizen, CNMI permanent resident, or U.S. permanent resident for the job.”);
6 *see also* NMIAC §80-20.1-220(a) (“No employer may hire a foreign national worker, transitional
7 worker, or other nonimmigrant alien if a qualified citizen, CNMI permanent resident, or U.S.
8 permanent resident applied for the job in a timely fashion.”).¹³ Violations of the Commonwealth
9 employment preference statute may result to a damage award of up to six months’ wages, as well
10 as sanctions of up to \$2,000 against the employer. 3 CMC § 4528(f)(1) and (f)(2); *see also*
11 NMIAC 80-20.1-485(c)(1).

12 The elements to demonstrate a violation of the CNMI employment preference law have been
13 met. As discussed in the section above, Respondent has not met the requirements of the 30%
14 workforce participation objective, as required under 3 CMC § 4525 and the Department
15 Employment Rules and Regulations. Further, Respondent rejected Complainant without just
16 cause.¹⁴ In this case, a job vacancy announcement was not issued – therefore there were no
17 minimum qualifications listed. Further, based on Complainant’s resume and job experience,
18 Complainant had years of experience in working in the service industry. Lastly, the only reason
19 Respondent rescinded the job offer and hired Commonwealth Only Transitional Workers through
20 the manpower agency was for a non-existent policy against hiring family members. Even if said
21 policy existed, company policies do not trump the applicable law. Accordingly, based on above,

22 ¹³ “The Secretary shall promulgate regulations to implement the intent of this chapter pursuant to the Administrative
23 Procedures Act including any delegation of the Secretary’s duties as imposed herein to any employee of the
24 Department.” 3 CMC § 4530.

25 ¹⁴ The Department’s regulations provide: “[t]he term ‘just’ cause’ for rejecting an application for employment
26 includes the lawful criteria that an employer normally applies in making hiring decisions such as rejecting persons
27 with criminal records for positions of trust, rejecting persons who present fraudulent or inaccurate documentation in
28 support of the application; rejecting persons without an education degree necessary for the position, rejecting persons
with unfavorable recommendations from prior employment, rejecting persons with an employment history indicating
an ability to perform the job successfully, rejecting persons with an educational background making it unlikely that
the necessary education or training to hold the position could be accomplished successfully within a reasonable time;
and similar just causes.” NMIAC § 80-20.1-455(f)(1). Notably, the aforementioned list of “just causes” is not
exhaustive. “Any criteria in making hiring decisions advanced in support of just cause must be consistent with the
published job vacancy announcement for the job and must be a part of the employer’s established hiring procedures.”
NMIAC § 80-20.1-455(f)(2).

1 Complainant is entitled to damages up to six months' wages and sanctions of up to \$2,000 against
2 Respondent is warranted.

3 **4. Respondent failed to maintain and submit compliance documents and required**
4 **records.**

5 The Department mandates employers to maintain and submit compliance documents and
6 required records, based on various statutes and the Department Employment Rules and
7 Regulations. In cases where an employer fails to maintain and timely submit said documents and
8 records, the hearing officer is authorized to: “[l]evy a fine not to exceed \$2,000 for *each* violation
9 of any provision of the Commonwealth Employment Act of 2007, as amended . . . [or] impose
10 such other sanction, order or relief as may reasonably give effect to the requirements of
11 Commonwealth law.” NMIAC § 80-20.1-485(c); *see also* 3 CMC § 4947.

12 **a. Respondent failed to submit a Total Workforce Listing.**

13 “The effective and fair administration of governmental efforts to secure full employment for
14 citizens, CNMI permanent residents, and U.S. permanent residents in the Commonwealth requires
15 accurate and up-to-date information about employment in the Commonwealth.” NMIAC § 80-
16 20.1-505(a). To the effect, “[e]ach business employer shall report quarterly, as of the last day of
17 the calendar quarter and within the time limits for filing the business gross receipts tax return, the
18 number and classification of employees for whom wages were paid during the quarter” in the
19 Total Workforce Listing.

20 Based on the applicable timeline, the Total Workforce Listing for the fourth quarter of 2020
21 was due on January 31, 2021. The Total Workforce Listing for the first quarter of 2021 was due
22 on April 30, 2021. The Total Workforce Listing for the second quarter of 2021 was due on July
23 31, 2021. The Total Workforce Listing for the third quarter of 2021 was due on October 31, 2021.

24 Respondent submitted one Total Workforce Listing on August 30, 2021, only after being
25 subpoenaed. The Total Workforce Listing was not properly labeled to identify the attributable
26 quarter. Additionally, considering that West Coast Restaurant has been in business since, at least,
27 December 2020, Respondent should have at least two Total Workforce Listings submitted and
28 filed with the Department. Accordingly, Respondent’s submission was untimely and incomplete.

b. Respondent failed to submit a completed Workforce Plan.

“A workforce plan has as its objective an increase in the percentage of citizens, U.S.
permanent residents, and CNMI permanent residents and the immediate relatives of citizens, U.S.

1 permanent residents and CNMI permanent residents in the workforce of the employer.” NMIAC
2 § 80-20.1-510(a). “A workforce plan shall identify specific positions currently occupied by
3 nonimmigrant aliens. The plan shall include a timetable for accomplishing the replacement of
4 nonimmigrant aliens with qualified citizens, CNMI permanent residents, and U.S. permanent
5 residents until the workforce objective is met. NMIAC § 80-20.1-510(b). “Every employer who
6 employs nonimmigrant aliens, unless exempted, is required to have on file with the Department,
7 a written, current plan. A workforce plan is current if it has been updated and filed with the past
8 12 month.” NMIAC § 80-20.1-510(c).

9 As a preliminary matter, there is no evidence or showing that Respondent was ever exempted
10 from the Workforce Plan requirement. On August 30, 2021, Respondent submitted an incomplete
11 Workforce Plan. Specifically, the Workforce Plan identifies 8 full time foreign workers.
12 However, the Total Workforce Listing, which was submitted at the same time as the Workforce
13 Plan, shows that there were 10 full time foreign national workers at the time. Also, the Workforce
14 Plan does not include all the requisite provisions such as the applicable O-net occupation
15 classifications, specific vocational preparations, or time table. Overall, it appears that very little
16 effort was put into preparing and submitting this document. Additionally, nothing about the
17 submitted documents addresses the objective in increasing the percentage of citizens, U.S.
18 permanent residents, and CNMI permanent residents, and their immediate relatives in the
19 employer’s workforce. For that reason, Respondent’s Workforce plan is insufficient to satisfy the
20 above-mentioned regulations.

21 **c. Respondent failed to maintain and submit all required records.**

22 “An employer of any foreign national worker shall keep, and present immediately upon
23 demand . . . (a) Personnel records for each foreign national worker . . . (b) Payroll records for each
24 foreign national worker . . .(c) Documentation for each foreign national worker; . . . and (d)
25 Business license and any other information or documentation required by regulations. 3 CMC §
26 4967. “An employer of a foreign national worker shall keep for at least two years, and present
27 immediately . . . (a) Personnel records for each foreign national worker . . . (b) Payroll records for
28 each foreign national worker . . . (c) Receipts for cash payments, cancelled checks, or deposit
records of payment of wages and overtime . . . (d) Documentation for each foreign national worker
... (e) the employer’s business license and security contract information with respect to each

1 foreign national worker; and (f) the number and type of employment-related accidents or illnesses
2 involving workers and adequate identification of each worker involved.

3 Here, Respondent was subpoenaed to submit personnel, payroll, and documentation records
4 for each foreign national worker employed at West Coast. Respondent's submission was not only
5 untimely, it was incomplete. First, Respondent failed to submit payroll records for each of the 12
6 foreign workers listed on Respondent's total workforce listing except for one pay stub and a
7 payroll calendar. Second, Respondent failed to submit personnel records and documentation for
8 four of the 12 foreign workers employed by Respondent. Ultimately, Respondent failed to
9 maintain and submit all the required records.

10 VI. JUDGMENT

11 In accordance with above, **JUDGMENT** is entered against Respondent for the following:

- 12 1. Failure to post a Job Vacancy Announcement;¹⁵
- 13 2. Failure to comply with the 30% Workforce Participation Objective;
- 14 3. A violation of the employment preference law;¹⁶
- 15 4. A failure to maintain and timely submit a quarterly total workforce listing, a complete
16 total workforce plan, and all required records.¹⁷

17 Complainant Edwin Bryan T. Mendoza Jr. is hereby awarded six months wages in the amount
18 of \$6,960 for Respondent's violation of the employment preference law.¹⁸ Respondent shall pay
19 Complainant the total amount by check or money order. To ensure that payment is made,
20 Complainant shall deliver said check or money order to the Administrative Hearing Office on or
21 before December 10, 2021, close of business.¹⁹

22 Based on above, Respondent has violated the CNMI labor laws and regulations on 15 different
23 occasions. Each violation holds a penalty or sanction of \$2,000. Accordingly, Respondent is
24 **SANCTIONED** \$30,000, all suspended but \$10,000. Respondent shall pay the sanction of
25 \$10,000 by check or money order to the CNMI treasury. Payment may be made in installments

26 _____
27 ¹⁵ Based on the number of foreign workers hired, this violation occurred ten times.

28 ¹⁶ This is a violation under both the Labor Case and Compliance Agency Case.

¹⁷ The undersigned finds that these are three separate unlawful actions.

¹⁸ This award is calculated at \$7.25 per hour for full time work of 80 hours per pay period.

¹⁹ The Administrative Hearing Office will contact Complainant to retrieve payment as soon as the payment is made.

1 of at least \$2,500, due on or before the first of each month, beginning January 1, 2022. A receipt
2 or other proof of payment must be promptly submitted to the Administrative Hearing Office on
3 the same day of payment.

4 The amount of \$20,000 is **SUSPENDED** provided that Respondent satisfies all of the
5 following conditions:

- 6 (1) Respondent timely pays the above-mentioned damages and sanctions; and
7 (2) Respondent commits no further violations of CNMI labor laws and regulations for the
8 period of one year from the date of this Order.

9 If Respondent fails to comply with the terms of this Order, Respondent shall be subject to a
10 reinstatement of all or part of the suspended sanction without the need for an additional hearing.
11 Enforcement is **ORDERED** to monitor the terms and conditions of Respondent's suspended
12 sanction and file a request to reopen this case should Respondent fail to comply.

13 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
14 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
15 this Order.²⁰

16 So ordered this **24th** day of November, 2021.

17
18 /s/
JACQUELINE A. NICOLAS
19 Administrative Hearing Officer
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28 ²⁰ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	Labor Case No. 21-042
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Rodolfo L. Manto Jr.,)	
)	ADMINISTRATIVE DECISION
Complainant,)	DISMISSING COMPLAINT FOR LACK
)	OF SUBJECT MATTER JURISDICTION
v.)	AND FAILURE TO STATE A CLAIM
)	
Imperial Pacific International (CNMI), LLC,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on December 1, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Rodolfo L. Manto Jr. (“Complainant”) was not present or represented at the Hearing.¹ Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) was present and represented by Human Resource Director Redie Dela Cruz.

Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” On July 23, 2021, Complainant filed a labor complaint for a violation for 20 CFR § 655.423 regarding employer obligations to foreign national workers. Upon review of the filings, Complainant solely alleges violations of federal law. Accordingly, the undersigned scheduled an Order to Show Cause hearing and the parties were served with a Notice of Hearing. Based on the applicable law and available evidence, the undersigned finds dismissal appropriate.

First, with respect to the alleged violations of employer obligations under 20 CFR § 655.423, this office lacks subject matter jurisdiction. The CNMI Department of Labor’s Administrative Hearing Office only has jurisdiction to hear labor violations of CNMI law and regulations. *See* 3 CMC § 4942; *see also* NMIAC § 80-20.1-450; *see also* 42 Com. Reg 044063 (Aug. 28, 2020). The employer obligations under 20 CFR 655.423 were promulgated and

¹ Complainant departed the CNMI on or around August of 2021.

1 enforced by the US Department of Labor (“USDOL”). In order to pursue this claim, Complainant
2 must seek relief with USDOL.

3 Second, Complainant fails to state a claim within the six-month statute of limitations.
4 Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the
5 date of the last-occurring event that is the subject of the complaint, except in cases where the
6 actionable conduct was not discoverable upon the last-occurring event.” “If a complaint is not
7 timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-
8 465(e). Emphasis added. Here, Complainant is seeking damages they incurred during the course
9 of his employment with Respondent. However, as provided on the Intake and Complaint form,
10 Complainant’s last day of employment with Respondent was March 16, 2020. Complainant did
11 not file his complaint until July 23, 2021—well beyond the six-month statute of limitations.
12 Further, there is no showing of good cause for filing late. For that reason, Complainant’s claims
13 are time-barred and must be dismissed.

14 After notice and opportunity to be heard, the undersigned finds that dismissal is necessary.
15 Accordingly, pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**, with prejudice.
16 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and
17 filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this
18 Order.²

19 So ordered this 1st day of December, 2021.

20 /s/

21 **JACQUELINE A. NICOLAS**
22 Administrative Hearing Officer
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28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
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In Re Matter of:)	Labor Case No. 21-043
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Xiaolin Lei,)	
)	ADMINISTRATIVE DECISION
Complainant,)	DISMISSING COMPLAINT FOR LACK
)	OF SUBJECT MATTER JURISDICTION
v.)	AND FAILURE TO STATE A CLAIM
)	
Imperial Pacific International (CNMI), LLC,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on December 1, 2021 at 9:30 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Xiaolin Lei (“Complainant”) was present and self-represented. Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) was present and represented Human Resource Director Redie Dela Cruz. Interpreter Brandon Doggett was also present to facilitate communications.

Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” On July 29, 2021, Complainant filed a labor complaint for a violation for 20 CFR § 655.423 regarding employer obligations to foreign national workers. Upon review of the filings, Complainant solely alleges violations of federal law. Accordingly, the undersigned scheduled an Order to Show Cause hearing and the parties were served with a Notice of Hearing. Based on the applicable law and available evidence, the undersigned finds dismissal appropriate.

First, with respect to the alleged violations of employer obligations under 20 CFR § 655.423, this office lacks subject matter jurisdiction. The CNMI Department of Labor’s Administrative Hearing Office only has jurisdiction to hear labor violations of CNMI law and regulations. *See* 3 CMC § 4942; *see also* NMIAC § 80-20.1-450; *see also* 42 Com. Reg 044063 (Aug. 28, 2020). The employer obligations under 20 CFR 655.423 were promulgated and

1 enforced by the US Department of Labor (“USDOL”). In order to pursue this claim, Complainant
2 must seek relief with USDOL.

3 Second, Complainant fails to state a claim within the six-month statute of limitations.
4 Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the
5 date of the last-occurring event that is the subject of the complaint, except in cases where the
6 actionable conduct was not discoverable upon the last-occurring event.” “If a complaint is not
7 timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-
8 465(e). Emphasis added. Here, Complainant is seeking damages they incurred during the course
9 of his employment with Respondent. However, as provided on the Intake and Complaint form,
10 Complainant’s last day of employment with Respondent was on or around March of 2020.
11 Complainant did not file his complaint until July 29, 2021—well beyond the six-month statute of
12 limitations. Further, there is no showing of good cause for filing late. For that reason,
13 Complainant’s claims are time-barred and must be dismissed.

14 After notice and opportunity to be heard, the undersigned finds that dismissal is necessary.
15 Accordingly, pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**, with prejudice.
16 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and
17 filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this
18 Order.¹

19 So ordered this 1st day of December, 2021.

20 /s/

21 **JACQUELINE A. NICOLAS**
22 Administrative Hearing Officer
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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
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ADMINISTRATIVE HEARING OFFICE**



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In Re Matter of:)	Labor Case No. 21-044
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Jun Wang,)	
)	ADMINISTRATIVE DECISION
Complainant,)	DISMISSING COMPLAINT FOR LACK
)	OF SUBJECT MATTER JURISDICTION
v.)	
)	
Imperial Pacific International (CNMI), LLC,)	
)	
Respondent.)	
)	

This matter came for an Order to Show Cause Hearing on December 1, 2021 at 10:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Jun Wang (“Complainant”) was present and self-represented. Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) was present and represented by Human Resource Director Redie Dela Cruz. Interpreter Brandon Doggett was also present to facilitate communications.

Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” On August 2, 2021, Complainant filed a labor complaint for a violation for 20 CFR § 655.423 regarding employer obligations to foreign national workers. Upon review of the filings, Complainant solely alleges violations of federal law. Accordingly, the undersigned scheduled an Order to Show Cause hearing and the parties were served with a Notice of Hearing. Based on the applicable law and available evidence, the undersigned finds dismissal appropriate.

This office lacks subject matter jurisdiction over the alleged violations of employer obligations under 20 CFR § 655.423. The CNMI Department of Labor’s Administrative Hearing Office only has jurisdiction to hear labor violations of CNMI law and regulations. *See* 3 CMC § 4942; *see also* NMIAC § 80-20.1-450; *see also* 42 Com. Reg 044063 (Aug. 28, 2020). The employer obligations under 20 CFR 655.423 were promulgated and enforced by the US

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Department of Labor (“USDOL”). In order to pursue this claim, Complainant must seek relief with USDOL. Accordingly, for lack of subject matter jurisdiction, this claim must be dismissed.

After notice and opportunity to be heard, the undersigned finds that dismissal is appropriate. Accordingly, pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**, with prejudice. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.¹

So ordered this 1st day of December, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**



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In Re Matter of:)	Labor Case No. 21-045
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Jun Dong,)	
)	ADMINISTRATIVE DECISION
Complainant,)	DISMISSING COMPLAINT FOR LACK
)	OF SUBJECT MATTER JURISDICTION
v.)	
)	
Imperial Pacific International (CNMI), LLC,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on December 1, 2021 at approximately 10:30 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Jun Dong (“Complainant”) was present and self-represented. Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) was present and represented by Human Resource Director Redie Dela Cruz. Interpreter Brandon Doggett was also present to facilitate communications.

Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit.” On August 2, 2021, Complainant filed a labor complaint for a violation for 20 CFR § 655.423 regarding employer obligations to foreign national workers. Upon review of the filings, Complainant solely alleges violations of federal law. Accordingly, the undersigned scheduled an Order to Show Cause hearing and the parties were served with a Notice of Hearing. Based on the applicable law and available evidence, the undersigned finds dismissal appropriate.

This office lacks subject matter jurisdiction over the alleged violations of employer obligations under 20 CFR § 655.423. The CNMI Department of Labor’s Administrative Hearing Office only has jurisdiction to hear labor violations of CNMI law and regulations. *See* 3 CMC § 4942; *see also* NMIAC § 80-20.1-450; *see also* 42 Com. Reg 044063 (Aug. 28, 2020). The employer obligations under 20 CFR 655.423 were promulgated and enforced by the US

1 Department of Labor (“USDOL”). In order to pursue this claim, Complainant must seek relief
2 with USDOL. Accordingly, for lack of subject matter jurisdiction, this claim must be dismissed.

3 After notice and opportunity to be heard, the undersigned finds that dismissal is
4 appropriate. Accordingly, pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**,
5 with prejudice. Any person or party aggrieved by this Order may appeal by filing the Notice of
6 Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from
7 the date of this Order.¹

8 So ordered this **1st** day of December, 2021.

9 */s/*

10 **JACQUELINE A. NICOLAS**
11 Administrative Hearing Officer

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
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In Re the Matter of:)	Compliance Agency Case No. 21-004-04
)	
CNMI Department of Labor -- Enforcement, Compliance and Monitoring Section,)	
)	
Complainants,)	ADMINISTRATIVE DECISION
)	
v.)	
)	
Scott Builders Construction, Inc.)	
)	
Respondent.)	

I. INTRODUCTION

This matter came for an Administrative Hearing on November 16, 2021 at 9:00 a.m. at the Administrative Hearing Office. Complainant CNMI Department of Labor – Enforcement, Compliance, and Monitoring Section (“Complainant” or “Enforcement”) was present and represented by Labor Law Enforcement Specialist III Arlene Rafanan. Respondent Scott Builders Construction, Inc. (“Respondent”) was present and represented by Accountant Rachel Macabanti.

Exhibits:

1. Exhibit 1: Copy of Enforcement’s Determination filed June 3, 2021 and Amended Determination filed October 1, 2021;
2. Exhibit 2: Copy of USCIS I-797 Petition;
3. Exhibit 3: Copy of USCIS Case Status;
4. Exhibit 4: Copy of USCIS Decision;
5. Exhibit 5: Copy of Employee Timesheet Summary and Paystub Vouchers;
6. Exhibit 6: Copy of Respondent’s Response
7. Exhibit 7: Total Workforce Listings
8. Exhibit 8: Amended Total Workforce Listings and Quarterly Withholding Tax Return

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II. BACKGROUND

1 On June 3, 2021, Enforcement filed a Determination and Notice of Violation against
2 Respondent for unauthorized employment of foreign nationals and a violation of the workforce
3 participation objection. In consideration of additional documents provided by Respondent, the
4 Department filed an Amended Determination and Notice of Violation on October 1, 2021. The
5 Department's Amended Determination finds the same violations but includes additional details.
6 Subsequently, the matter was set for an administrative hearing.

III. JURISDICTION

7
8 "The Administrative Hearing Office shall have original jurisdiction to resolve all actions
9 involving alleged violations of the labor and wage laws of the Commonwealth, including but not
10 limited to any violation of this chapter and regulations promulgated thereunder." 3 CMC § 4942.
11 The Employment Rules and Regulations further provide:

12 The Administrative Hearing Office shall have jurisdiction over
13 complaints filed with the Administrative Hearing Office by **U.S.**
14 **Citizens, CNMI permanent residents or U.S. permanent residents,**
15 and agency complaints filed by the Department, with respect to
16 violations of the requirements of job preference and workforce
participation pursuant to the Commonwealth Employment Act of 2007,
as amended, and other violations of labor laws application in the
Commonwealth. ...

17 The Administrative Hearing Office shall have jurisdiction over
18 complaints filed with the Administrative Hearing Office by **foreign**
19 **national workers,**¹ and agency complaints filed by the Department,
20 with respect to violations of Commonwealth law and regulations
regarding employment and other labor laws applicable in the
Commonwealth. ...

21 The Administrative Hearing Office shall have jurisdiction over
22 complaints filed with the Administrative Hearing Office by other
23 **nonimmigrant aliens**² with respect to violations of Commonwealth
24 law and regulations regarding employment.

25
26 ¹ "Foreign national worker" means a person who is not a United States citizen, a United States permanent resident, a
27 CNMI permanent resident, or an immediate relative of the United States citizen or a United States permanent resident,
or an immediate relative of a CNMI permanent resident, and who entered the CNMI as a nonimmigrant prior to
28 November 28, 2010 for the declared purpose of being employed in the Commonwealth." NMIAC § 80-20.1-080(k).

² "Nonimmigrant alien" means a person described in Section 101(a)(15) of the Immigration and Nationality Act, 8
U.S.C. 1101(a)(15)." NMIAC § 80-20.1-080(p).

1 NMIAC § 80-20.1-450(b)(1)-(3) (emphasis added).

2 **IV. FINDINGS OF FACT**

3 In consideration of the evidence provided and credibility of witness testimony, the
4 undersigned issues the following findings of fact:

- 5 1. On November 5, 2020, Habibur Rahman, Mohammad Arman, Abul Kalam Azad, Ruben
6 Hossain, and Kamal filed a labor complaint against Respondent for, among other things,
7 unpaid wages.³ The labor cases were referred to Enforcement for further investigation and
8 other employer compliance issues but ultimately dismissed.
- 9 2. Based on Respondent's admissions and documents gathered in the course of their
10 investigations, Enforcement initiated a Compliance Agency Case against Respondent.
 - 11 a. On June 3, 2021, Enforcement filed a Determination and Notice of Violation⁴
12 against Respondent for unauthorized employment of foreign nationals and a
13 violation of the 30% workforce participation objective.
 - 14 b. In consideration of additional documents provided by Respondent, the Department
15 filed an Amended Determination and Notice of Violation⁵ on October 1, 2021.
16 The Department's Amended Determination finds the same violations but includes
17 additional details.
 - 18 c. During the Administrative Hearing, Enforcement dropped the violation for the
19 30% workforce participation objective.
 - 20 d. Respondent did not deny or contest any findings in the Department's
21 Determination and Amended Determination.
- 22 3. Respondent utilizes foreign workers for various construction projects.
 - 23 a. For fiscal year 2019, Respondent submitted a CW-1 petition⁶ for: (1) Hasan
24 Mahede; (2) Abul Alam Azad and (3) Rubel Hossain. On June 17, 2019, USCIS
25 denied Respondent's petition.⁷

26 ³ See Labor Case Nos. 20-039 through 20-043.

27 ⁴ Exhibit 1.

28 ⁵ *Id.*

⁶ Exhibit 2.

⁷ Exhibit 3.

1 b. For fiscal year 2020, Respondent submitted a CW-1 petition⁸ for: (1) Arafat
2 Rahaman; (2) Kamal; (3) Mohammad Arman; (4) Habibur Rahman; and (5) Rubel
3 Hossain. On July 9, 2020, USCIS denied Respondent's petition.⁹ USCIS's
4 Decision states that Respondent's Petition was denied because there was no
5 evidence that each beneficiary was lawfully present in the CNMI at the time the
6 petition was filed.¹⁰

7 4. Respondent posted a job vacancy announcement for construction helpers. Respondent did
8 not receive any applications, resumes, or referrals in connection to said job vacancy
9 announcement.

10 5. Although Respondent had knowledge that the above-mentioned petitions were denied and
11 certain individuals did not have valid work authorization, Respondent allowed people to
12 work until the construction project was completed.

13 6. During the Administrative Hearing, Respondent admitted to employing Abul Kalam
14 Azad, Rubel Hossain, Kamal, Mohammad Arman, and Habibur Rahman without valid
15 employment authorization.¹¹

16 a. Abul Kalam Azad is a Bangladesh national without valid employment
17 authorization. Mr. Azad worked for Respondent as a construction helper without
18 employment authorization from May 13, 2020 to October 17, 2020.

19 b. Rubel Hossain is a Bangladesh national without valid employment authorization.
20 Mr. Hossain worked for Respondent as a construction helper without employment
21 authorization from May 13, 2020 to October 17, 2020.

22 c. Kamal is a Bangladesh national without valid employment authorization. Mr.
23 Kamal worked for Respondent as a construction helper without employment
24 authorization from May 13, 2020 to October 17, 2020.

25 d. Mohammad Arman is a Bangladesh national without valid employment
26 authorization. Mr. Arman worked for Respondent as a construction helper without
27 employment authorization from May 13, 2020 to October 17, 2020.

28 ⁸ Exhibit 2.

⁹ Exhibits 3-4.

¹⁰ Exhibit 4.

¹¹ Exhibits 5-6.

1 e. Habibur Rahman is a Bangladesh national without valid employment
2 authorization. Mr. Rahman worked for Respondent as a construction helper
3 without employment authorization from May 13, 2020 to October 17, 2020

4 V. CONCLUSIONS OF LAW

5 In consideration of the above-stated findings and applicable law, the undersigned issues the
6 following conclusions of law:

7 **1. Respondent employed five foreign nationals without valid employment authorization
8 in violation of 3 CMC § 4963.**

9 Pursuant to 3 CMC § 4963 (j), “[e]n employer shall not employ a person who is not a citizen
10 or permanent resident and who entered the Commonwealth without authorization to work. . .” A
11 violation of 3 CMC § 4963 is grounds for “the denial of an application for an approved
12 employment contract, voiding of an existing approved employment contract, debarment of an
13 employer, and a fine of up to two-thousand dollars for each unlawful action.” 3 CMC § 4964.

14 As a preliminary matter, Respondent does not contest the allegations by Enforcement and
15 admitted to employing individuals without valid work authorization. As discussed above,
16 Respondent employed five Bangladesh nationals without employment authorization. Based on
17 USCIS’s petition denial, there was no evidence or showing that the individuals entered the CNMI
18 lawfully. Despite Respondent’s knowledge that the five foreign nationals did not have valid work
19 authorization, Respondent allowed the individuals to work over the course of several months to
20 finish an ongoing construction project. Based on the applicable law and available evidence,
21 Respondent violated 3 CMC § 4963(j) and a fine of \$2,000 for each unlawful action is warranted.

22 VI. JUDGMENT

23 In accordance with above, **JUDGMENT** is entered against Respondent for unauthorized
24 employment pursuant to 3 CMC § 4963. Accordingly, Respondent is **SANCTIONED** \$2,000
25 for each unlawful action, or a total of \$10,000, all suspended but \$5,000.

26 Respondent shall pay the sanction of \$5,000 by check or money order to the CNMI treasury.
27 Payment may be made in installments of at least \$1,000, due on or before the first of each month,
28 beginning January 1, 2022. A receipt or other proof of payment must be promptly submitted to
the Administrative Hearing Office on the same day of payment.

1 The remaining amount of \$5,000 is **SUSPENDED** provided that Respondent satisfies all of
2 the following conditions:

3 (1) Respondent timely pays their sanction and provides proof of payment; and

4 (2) Respondent commits no further violations of CNMI labor laws and regulations for the
5 period of one year from the date of this Order.

6 If Respondent fails to comply with the terms of this Order, Respondent shall be subject to a
7 reinstatement of all or part of the suspended sanction. Enforcement is **ORDERED** to monitor the
8 terms and conditions of Respondent's suspended sanction and file a request to reopen this case
9 should Respondent fail to comply.

10 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
11 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
12 this Order.¹²

13
14 So ordered this **29th** day of November, 2021.

15 */s/*

16 **JACQUELINE A. NICOLAS**
17 Administrative Hearing Officer

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28 ¹² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
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In Re Matter of:)	PUA Case No. 21-0129
)	
Maxine M. Lopez,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on September 7, 2021 at approximately 9:00 a.m. and on September 22, 2021 at 1:30 p.m. at the Administrative Hearing Office. Appellant Maxine M. Lopez (“Claimant” or “Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Department” or “Appellee”) was present and represented by PUA Coordinator Jenny Lee and Labor Certification Worker Dennis Cabrera. The only other witness called was Virle Shay P. Gayatin (“Ms. Gayatin”), the Office Manager and Accountant for Appellant’s Employer Saipan Seventh Day Adventist School (“Employer” or “School”). The following documents were admitted as evidence:

Exhibits:

1. Exhibit 1: Copy of the Appellant’s Application Snapshot, filed July 7, 2020;
2. Exhibit 2: Copy of the Appellant’s Application Snapshot (new), filed on March 15, 2021;
3. Exhibit 3: Copies of Appellant’s Weekly Certifications for the weeks beginning March 15, 2020 to weeks ending August 15, 2020;
4. Exhibit 4: Copy of Appellant’s Employment Certification from Employer, dated August 19, 2020;
5. Exhibit 5: Copy of Employer’s Work Schedule for March 16-20, 2020;
6. Exhibit 6: Copies of Case Notes, dated August 18, 2020, September 11, 2020, April 30, 2021, May 27, 2021, June 14, 2021, and June 15, 2021;

- 1 7. Exhibit 7: Copies of E-mail Communications between the Department and Appellant,
2 dated May 25, 2021 and May 27, 2021;
- 3 8. Exhibit 8: Copies of E-mail Communications between Department and Employer, dated
4 May 27, 2021, June 15, 2021, and June 17, 2021;
- 5 9. Exhibit 9: Copies of E-mail Communications from Department's Benefit Payment
6 Control Unit, dated July 7, 2021;
- 7 10. Exhibit 10: Copy of Department's Disqualifying Determination, dated June 21, 2021;
- 8 11. Exhibit 11: Copy of Department's Notice of Overpayment, dated June 16, 2021;
- 9 12. Exhibit 12: Copy of Department's Audit Sheet;
- 10 13. Exhibit 13: Copy of Appellant's Request to file an Appeal, filed June 23, 2021;
- 11 14. Exhibit 14: Copy of Notice of Hearing, issued June 23, 2021;
- 12 15. Exhibit 15: Copy of Notice of Hearing, issued September 7, 2021;
- 13 16. Exhibit 16: Copy of Subpoena to Ms. Gayatin, issued September 7, 2021; and
- 14 17. Exhibit 17: Copy of Facebook Messenger Communications between Appellant and Ms.
15 Gayatin, from March 5, 2020 to March 17, 2020.

16 For the reasons stated below, the Department's Determination dated June 21, 2021 is
17 **AFFIRMED**. Claimant is not eligible for benefits for the period of May 31, 2020 to August 8, 2020.

18 II. JURISDICTION

19 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020
20 was signed into law creating new temporary federal programs for unemployment benefits called
21 Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation
22 ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
23 ("Continued Assistance Act") amended and created new provisions of said federal unemployment
24 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
25 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs
to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

1 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
2 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
3 appeals of agency decisions.

4 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

5 III. PROCEDURAL BACKGROUND & ISSUES

6 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
7 review of Appellant's application and supporting documents, the Department issued a Disqualifying
8 Determination on June 21, 2021⁵ and Notice of Overpayment on June 16, 2021.⁶ On June 23, 2021,
9 Appellant filed the present appeal and the matter was scheduled for a hearing.⁷ As stated in the Notice
of Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an
overpayment occurred and funds should be returned.

10 IV. FINDINGS OF FACT

11 In consideration of the evidence provided and credibility of witnesses' testimony, the undersigned
12 issues the following findings of fact:

- 13 1. Appellant was scheduled to start employment on March 16, 2020 as a part-time daycare
14 teacher at the Employer's School and Child Development Center, located in Chalan Kiya,
Saipan Island. Appellant's position was for 20 hours per week at an hourly rate of \$7.25.
- 15 2. Beginning on March 16, 2020, private and public schools closed, pursuant to the CNMI
16 Governor's Executive Order 2020-04 declaring a COVID-19 public health emergency.⁸
17 Under Second Amended Executive Order 2020-04 ("SAEO 2020-4"), the closure of all
18 private schools in the CNMI, including Employer's school,⁹ was extended to when the
declaration of emergency ended and/or Directive 15 ended.

20 ⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
21 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

22 ⁵ Exhibit 10.

23 ⁶ Exhibit 11.

24 ⁷ Exhibits 13-14

25 ⁸ Executive Order 2020-04 was amended and the public health emergency declaration extended by various,
subsequent Executive Orders, Directives, and Memoranda, including on March 19, 2020 by Second Amended
Executive Order 2020-04 ("SAEO 2020-04"), Executive Order 2020-005, on April 16, 2020 by Executive Order
2020-007. and Memoranda GOV20-110, GOV2-120, GOV20-130, GOV20-133, GOV20-140

⁹ Exhibit 8 (email from Ms. Gayatin, dated June 15, 2021).

- 1 3. On March 19, 2020, after a teacher separated from Employer and moved off-island, Employer
2 verbally amended its offer of employment to Appellant to a full-time teacher position with
3 regular hours of 40 hours per week.¹⁰ Employer's job offer to Appellant was for the remainder
4 of the school year only, until May 28, 2020.¹¹
- 4 4. Employer's School and Child Development Center remained closed for the school year.
- 5 5. On or around July 7, 2020, Appellant submitted an application¹² for unemployment assistance
6 under the PUA and FPUC programs administered by the Department. In her initial
7 application,¹³ Appellant self-certified under penalty of perjury that:
 - 7 a. Appellant's employment was directly affected by COVID-19 when she was scheduled
8 to commence employment and does not have a job or is unable to reach the job as a
9 direct result of the COVID-19 public health emergency; and
 - 8 b. Appellant's employment was affected since March 15, 2020.
- 10 6. Appellant also submitted weekly certifications to claim continued benefits from weeks ending
11 March 15, 2020 to August 15, 2020. In each of these weekly certifications, Appellant reported
12 and self-certified:
 - 13 a. That her employment was still affected by COVID-19 because she was scheduled to
14 commence employment and does not have a job or is unable to reach the job as a direct
15 result of the COVID-19 public health emergency;
 - 14 b. That she is able and available for work during the claimed week; and
 - 15 c. That she earned zero gross income of during the claimed week.
- 16 7. The answers provided in Appellant's application and weekly certifications were submitted
17 under penalty of perjury. It is Appellant's responsibility to provide true, accurate, and
18 complete answers. Moreover, it is Appellant's responsibility to be informed about the program
19 by reading the PUA Benefit Rights Information Handbook and other official written material
20 regarding PUA.
- 20 8. The statements and self-certifications that Appellant provided in her application and her
21 weekly certifications were not entirely truthful, accurate and complete. Specifically, Appellant
22 was offered employment only from March 16, 2020 to May 28, 2020.¹⁴

23 ¹⁰ *Id.*

24 ¹¹ *Id.*

25 ¹² Exhibit 1.

¹³ *Id.*

¹⁴ Exhibit 8 (email from Ms. Gayatin dated June 15, 2021).

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- 9. As demonstrated by an internal audit¹⁵ and confirmation with the Department of Finance,¹⁶ Appellant was issued a paper check on August 11, 2020 for the amount of \$15,690.00¹⁷ in federal unemployment benefits for weeks ending March 21, 2020 to August 8, 2020.
- 10. On August 18, 2020, the Department’s Benefit Payment Control Unit (“BPC Unit”) flagged Appellant’s claim for “insufficient documents”.¹⁸
- 11. On August 19, 2020, BPC Unit Supervisor Sharon Palacios¹⁹ contacted Appellant by phone to discuss the insufficiency of her documentation and to ask Appellant about Employer’s offer of employment. Ms. Palacios also asked whether Appellant received the paper check issued on August 11, 2020. Appellant told Ms. Palacios that she had not received any paper check.²⁰
- 12. The check payment cleared on August 25, 2020, as confirmed by the Department of Finance and BPC Unit.²¹
- 13. On September 11, 2020, Ms. Palacios contacted Employer directly and spoke with the school principal regarding the job offer made to Appellant and Employer submitted an Employer Certification stating that Appellant’s employment was affected by COVID-19 pandemic as of March 16, 2020.²²
- 14. Ms. Palacios also called Appellant on September 11, 2020 and she asked Appellant if she received the paper check.²³ Appellant lied and said she had not received the paper check despite cashing the check on or about August 25, 2020.
- 15. Appellant admitted at the Administrative Hearing that she received the paper check issued on August 11, 2020 for the amount of \$15,690.00²⁴, but she indicated that she could not remember when she received or cashed this check.
- 16. On March 15, 2021, Appellant submitted an application for additional, continued benefits.²⁵ In this new application, Appellant certified under penalty of perjury to the same information and claims as in her initial application and weekly certifications.²⁶

¹⁵ Exhibit 12.
¹⁶ Exhibit 9.
¹⁷ Exhibit 9.
¹⁸ Exhibit 6.
¹⁹ Ms. Palacios is no longer with the Department and was unavailable to testify.
²⁰ Exhibit 6.
²¹ *Id.*
²² Exhibit 4.
²³ Exhibit 6.
²⁴ Exhibit 9.
²⁵ Exhibit 2.
²⁶ *Id.*

- 1 17. The Department reviewed Appellant's new claim and determined that Appellant did not
2 provide sufficient supporting documents to substantiate her claim.
- 3 18. On June 16, 2021, the Department issued a Notice of Overpayment for a total amount of
4 \$7,420.00 in federal unemployment benefits for weeks ending June 6, 2020 to August 8, 2020.
5 Specifically, this overpayment amounted to \$3,100.00 in PUA benefits and \$4,320.00 in
6 FPUC benefits.²⁷
- 7 19. On June 21, 2021, as a result of an audit and further investigation, the Department issued a
8 determination disqualifying Appellant from PUA and FPUC benefits from May 31, 2020 to
9 August 8, 2020. The Department stated reason for disqualification is that Appellant's
10 Employer confirmed that Appellant was to commence work from March 16, 2020, but the
11 Employer also confirmed that the bona fide job offer was only until May 28, 2020.²⁸
- 12 20. On June 23, 2021, Appellant filed the present appeal and the matter was scheduled for an
13 Administrative Hearing.²⁹ Appellant is appealing the Department's Determination and Notice
14 of Overpayment because she believes that if the school had been allowed to reopen, she would
15 have continued to work for Employer at least until the summer of 2020.
- 16 21. The Department stated that the overpayment occurred in part because of a systematic
17 processing and review of claims and an automatic issuance of payment in the online portal.
- 18 22. Appellant is able to return some of the benefits because she still has some of funds and she
19 has very minimal household expenses.
- 20 23. Appellant has not returned to work because she is a full-time college student, but she indicated
21 that she could try to find work and would be able to work given her class schedule.
- 22 24. During the Administrative Hearing, Appellant provided unreliable and unsubstantiated
23 testimony because she had difficulty recalling details such as the discussions and
24 communications with Employer, the terms of her offer of employment, and even estimations
25 of household expenses and remaining funds.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

²⁷ Exhibit 11.

²⁸ Exhibit 10.

²⁹ Exhibit 13-14.

1 **1. Appellant’s employment was not affected as a direct result of COVID-19.**

2 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC
3 benefits are available to “covered individuals.” A “covered individual” is someone who: (1) is not
4 eligible for regular compensation or extended benefits under State or Federal law or pandemic
5 emergency unemployment compensation under Section 2107 of the CARES Act, including an
6 individual who has exhausted all rights to regular unemployment or extended benefits under State or
7 Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;³⁰ (2) self-
8 certifies³¹ that the individual is unemployed, partially unemployed, or unable or unavailable to work³²
9 as a direct result³³ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
10 (3) provides required documentation of employment/self-employment within the applicable period of
11 time.³⁴

12 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
13 specifically identifies the COVID-19 qualifying reasons³⁵ as:

- 14 (aa) The individual has been diagnosed with COVID-19 or is
15 experiencing symptoms of COVID-19 and is seeking a medical
16 diagnosis;
- 17 (bb) A member of the individual’s household has been diagnosed with
18 COVID-19;
- 19 (cc) The individual is providing care for a family member or a member of
20 the individual’s household who has been diagnosed with COVID-19;
- 21 (dd) A child or other person in the household for which the individual has
22 primary caregiving responsibility is unable to attend school or
23 another facility that is closed as a direct result of the COVID-19
24 public health emergency and such school or facility care is required
25 for the individual to work;

30 This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

31 The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.

32 A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. *See* HAR § 12-5-35.

33 Pursuant to 20 CFR § 625.5, unemployment is considered a “direct result” of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

34 Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

35 These reasons are further defined or illustrated in UIPL 16-20, Change 4.

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- (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 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 US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)³⁶, above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
- (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
- (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, the undersigned finds that Appellant does not meet the definition of "covered individual" eligible for PUA and FPUC benefits for the period from May 31, 2020 to August 8, 2020, which is

³⁶ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 the period that Appellant is appealing. As substantiated by sworn witnesses' testimony, Employer's
2 Certification, Employer's e-mail communications, Department case notes, other communications
3 between the Department and Employer, Appellant was offered a full-time day care teacher position
4 from March 16, 2020 to May 28, 2020 only. As a direct result of COVID-19 pandemic, Appellant
5 never started employment on March 16, 2020 because Employer's School and Childcare Center
6 closed on March 16, 2020 and remained closed for the duration of the school year. Appellant's
7 expectations that she would continue working beyond May 28, 2020 through and until the summer
8 were unsubstantiated and the evidence and testimony Appellant presented were insufficient to
9 determine that she continued to be eligible for benefits. In addition, Appellant indicated that she has
10 not returned to work because she is a full-time college student. Accordingly, Appellant's continued
11 unemployment was not a direct result of COVID-19 public health emergency and she is not a "covered
12 individual" eligible for PUA and FPUC benefits from May 31, 2020 to August 8, 2020.

13 **2. Appellant is overpaid and is not entitled to a waiver.**

14 "Benefits shall be paid promptly in accordance with a determination, redetermination, or decision
15 or appeal."³⁷ However, "[a]ny individual who has received any amount as benefits . . . to which the
16 individual was not entitled shall be liable for the amount unless the overpayment was received without
17 fault on the part of the recipient and its recovery would be against equity and good conscience."³⁸

18 Fault³⁹ is defined as:

- 19 (A) A material statement made by the individual which the individual
20 knew or should have known to be incorrect; or
- 21 (B) Failure to furnish information which the individual knew or should
22 have known to be material; or
- 23 (C) Acceptance of a payment which the individual either knew or
24 reasonably could have been expected to know was incorrect.

25 ³⁷ HRS § 383-43.

³⁸ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the payment was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the part of any such individual and such repayment would be contrary to equity and good conscience. This waiver authority applies to overpayments that meet this criterion at any time since the PUA program began.

³⁹ HRS 12-5-83.

1 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
2 individual below the poverty line and taking away basic necessities to live. In evaluating equity and
3 good conscience,⁴⁰ the factors to consider include, but are not limited to:

- 4 (A) Whether notice of a redetermination was given to the claimant, as
5 required ...
- 6 (B) Hardship to the claimant that the repayment may impose; and
- 7 (C) The effect, if any, that the repayment will have upon the
8 fulfillment of the objectives of the program.⁴¹

9 Considering the foregoing, Appellant should not have been paid benefits under the PUA or FPUC
10 programs because Appellant’s continued unemployment was not affected as a direct result of a
11 qualifying COVID-19 reason. The undersigned recognizes that some fault may be assigned to the
12 Department because the overpayment occurred in part through a systematic review and issuance of
13 payment in the online portal in error. However, upon further review of Appellant’s initial application
14 and weekly certifications, Department’s investigations and case notes, e-mail communications, and
15 witnesses’ testimony, the undersigned finds that Appellant is not entitled to a waiver because the
16 overpayment occurred in significant part due to her fault. First, Appellant provided material
17 statements in her initial application and weekly certifications that she knew or should have known to
18 be incorrect and incomplete. The overpayment occurred because of Appellant’s self-certifications that
19 her COVID-19 qualifying reason was that her employment was still affected by COVID-19 because
20 she was scheduled to commence employment and does not have a job or is unable to reach the job as
21 a direct result of the COVID-19 public health emergency, but in fact Employer only offered Appellant
22 employment from March 16, 2020 to the end of the school year, May 28, 2020.

23 In addition, based on the evidence and testimony presented, on August 18, 2020 the Department’s
24 BPC Unit began contacting Appellant about the insufficiency of her documentation and the BPC
25 Unit’s investigation of her claims. Appellant was alerted to the fact that a paper check payment issued
on August 11, 2020 may have been issued in error, but on August 19, 2020, Appellant said she had
not received the paper check. Despite being alerted to the investigation of her claims and possible
issuance of the check payment in error, Appellant cashed the check on or around August 25, 2020.⁴²

⁴⁰ *Id.*

⁴¹ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

⁴² Exhibit 9.

1 On September 11, 2020, she lied to the Department and said she had not received the check. Applying
2 the definition of “fault” above, the undersigned finds that Appellant is at fault because she made a
3 material statement which she knew or should have known to be incorrect and she accepted payment
4 which she knew or reasonably could have been expected to know was incorrect.

5 With respect to “equity and good conscience”, the undersigned finds that repayment of the
6 \$7,420.00 would not be contrary to equity and good conscience because Appellant indicated that she
7 has not spent all of the benefits, she does not have a lot of household expenses, and she could try to
8 find employment with her current college schedule. Therefore, the undersigned finds that repayment
9 would not impose hardship on Appellant and she is not entitled to waiver of repayment.

10 VI. DECISION

11 For the reasons stated above, it is ORDERED that:

- 12 1. The CNMI Department of Labor’s Disqualifying Determination, dated June 21, 2021, is
13 **AFFIRMED**;
- 14 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of May 31, 2020
15 to August 8, 2020;
- 16 3. The CNMI Department of Labor’s Notice of Overpayment, dated June 16, 2021, is
17 **AFFIRMED**;
- 18 4. Appellant was overpaid in the total amount of **\$7,420.00** and is not entitled to a waiver for
19 repayment; and
- 20 5. Appellant is **ORDERED** to report to the Department’s Benefit Payment Control Unit to
21 submit to a reasonable payment plan, in accordance with the applicable rules and as
22 determined by the Department’s Benefit Payment Control Unit.

23 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
24 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
25 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
written request must be submitted to the Administrative Hearing Office, either in person at 1357
Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a
subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still
disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**



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In Re Matter of:)	PUA Case No. 21-0135
)	
Evangeline M. Dela Pena,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on September 30, 2021 at 9:00 a.m. and on October 14, 2021 at 9:00 a.m. at the Administrative Hearing Office on Saipan. Appellant Evangeline Dela Pena (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Coordinator Rosalinda Ulloa and Labor Certification Worker Dennis Cabrera. There were no other witnesses that provided testimony at the hearing. The Administrative Hearing on October 14, 2021 was assisted by interpreter, Rochelle Tomokane.

The following Exhibits were admitted into evidence:

Exhibits:

1. Exhibit 1: Copy of Appellant’s Application Snapshot, filed January 9, 2021;
2. Exhibit 2: Copy of Appellant’s Weekly Certification for weeks beginning December 27, 2020 and ending January 2, 2021;
3. Exhibit 3: Copy of Department’s Disqualifying Determination, dated July 2, 2021;
4. Exhibit 4: Copy of Appellant’s Request to file an Appeal, including supporting documents, filed July 12, 2021;
5. Exhibit 5: Copy of the Notice of Hearing, issued July 12, 2021;
6. Exhibit 6: Copy of the Order Continuing Hearing, issued September 30, 2021;

- 1 7. Exhibit 7: Copy of Email Communication from the Department's Benefit Payment
2 Control Unit, dated August 25, 2021;
- 3 8. Exhibit 8: Copy of Appellant's permanent resident card, valid from January 25, 2018
4 to January 25, 2028;
- 5 9. Exhibit 9: Copy of Memorandum from Appellant's Employer, dated March 13, 2020;
- 6 10. Exhibit 10: Copy of Email Communications between the Department and Appellant's
7 Employer, dated June 30, 2021;
- 8 11. Exhibit 11: Copy of Appellant's Employment Certification, dated July 20, 2020;
- 9 12. Exhibit 12: Copy of Appellant's Employment Certification, dated October 6, 2021;
- 10 13. Exhibit 13: Copy of Appellant's Employment Certification, dated January 26, 2021;
11 and
- 12 14. Exhibit 14: Copy of Appellant's Email Communication to the Administrative Hearing
13 Office, dated October 13, 2021.

13 For the reasons stated below, the Department's Determination dated July 2, 2021 is
14 **AFFIRMED**. Claimant is not eligible for benefits for the period of December 27, 2020 to
15 March 13, 2021.

16 II. JURISDICTION

17 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
18 2020 was signed into law creating new temporary federal programs for unemployment benefits
19 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
20 Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed
21 Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said
22 federal unemployment insurance programs, which, among other things, extended the PUA and
23 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
24 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is
25 charged with the responsibility in administering the above-mentioned programs in the CNMI in
26

27 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

1 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
2 has been designated to preside over appeals of agency decisions.

3 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

4 III. PROCEDURAL BACKGROUND & ISSUES

5 On or about January 9, 2020, Appellant filed to reopen a claim for unemployment benefits
6 under the PUA and FPUC programs.⁵ Upon review of Appellant's application and supporting
7 documents, the Department issued a Disqualifying Determination on July 2, 2021.⁶ On July 12,
8 2021, Appellant filed the present appeal and the matter was scheduled for a hearing.⁷ As stated in
9 the Notice of Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA; and
(2) whether an overpayment occurred and funds should be returned.⁸

10 IV. FINDINGS OF FACT

11 In consideration of the evidence provided and credibility of witnesses' testimony, the
12 undersigned issues the following findings of fact:

- 13 1. On January 22, 2020, just prior to the COVID-19 pandemic, Appellant was rehired as a
14 Food Server at LSG Lufthansa Service Saipan, Inc. ("Employer"), located in Dan Dan
15 Village, Saipan Island.⁹ Appellant had previously worked for Employer as Food Server
16 but had separated from Employer due to unrelated, non-COVID-19 pandemic reasons.
- 17 2. When Appellant was rehired by Employer, it was clear that Appellant's employment
18 contract was only from January 22, 2020 to July 31, 2020.¹⁰
- 19 3. Appellant was paid an hourly rate of \$7.25 and she was full-time with regular hours of 75
20 hours bi-weekly.¹¹
- 21 4. Employer is a food caterer for CNMI's public and private schools and for flights into and
22 out of the CNMI. Appellant was assigned as Food Server to Mount Carmel School, a
CNMI private school.

23
24 ⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

25 ⁵ Exhibit 1.

26 ⁶ Exhibit 3.

27 ⁷ See Exhibits 4-6.

28 ⁸ See Exhibits 5-6.

⁹ Exhibits 12-13

¹⁰ Exhibits 10-12. See also Exhibit 9 (Employer's Memorandum to All LSG Employees regarding workforce
reduction).

¹¹ Exhibits 12-13

- 1 5. Pursuant to the CNMI Governor's Executive Orders declaring a COVID-19 public health
2 emergency, private and public schools closed from about March 13, 2020.
- 3 6. Due to the economic impact of the pandemic Appellant's Employer implemented cost-
4 cutting measures that affected Appellant's employment. Specifically, Appellant was
5 furloughed by her Employer, effective March 13, 2020 to July 31, 2020.¹²
- 6 7. On or about January 2, 2021, Appellant submitted a weekly certification to apply for and
7 claim for PUA and FPUC programs administered by the Department for the period of
8 December 27, 2020 to January 2, 2021. In this weekly certification, Appellant reported
9 the following:
- 10 a. That her employment was still affected by COVID-19 because her place of
11 employment was closed as a direct result of the COVID-19 public health
12 emergency;
- 13 b. That she is able and available for work during the claimed week; and
- 14 c. That she earned zero gross income during the claimed week.¹³
- 15 8. At about the same time, on or about January 9, 2021, Appellant applied to reopen her
16 claim for unemployment assistance under the PUA and FPUC programs administered by
17 the Department.¹⁴ In the application,¹⁵ Appellant self-certified under penalty of perjury
18 that:
- 19 d. Appellant is a U.S. Permanent Resident;
- 20 e. Appellant's employment was directly affected by COVID-19 when her place of
21 employment was closed as a direct result of the COVID-19 public health
22 emergency; and
- 23 f. Appellant's employment was affected because she received a notice of termination
24 or layoff effective March 13, 2020.¹⁶
- 25 9. The answers provided in Appellant's initial application and weekly certifications were
26 submitted under penalty of perjury. It is Appellant's responsibility to provide true,
27 accurate, and complete answers. Moreover, it is Appellant's responsibility to be informed
28

¹² See Exhibit 12-13.

¹³ Exhibit 2.

¹⁴ Exhibit 1.

¹⁵ *Id.*

¹⁶ *Id.*

1 about the program by reading the PUA Benefit Rights Information Handbook and other
2 official written material regarding PUA.

3 10. The statements that Appellant provided in her application and her weekly certifications
4 are not entirely true, accurate and complete. Appellant was never guaranteed employment
5 after her contract expiration date of July 31, 2020.

6 11. With respect to Appellant's immigration status and employment authorization, Appellant
7 provided testimony and substantiating evidence to demonstrate that she is a U.S.
8 Permanent Resident since January 25, 2018 until January 25, 2028.¹⁷

9 12. Appellant's claim was reviewed by the Department. On July 2, 2021 the Department
10 issued a determination disqualifying Appellant from PUA and FPUC benefits from
11 December 27, 2020 to March 13, 2021 because the Department found that Appellant's
12 unemployment was due to the end of her contract and not the direct result of the COVID-
13 19 pandemic.¹⁸

14 13. On July 12, 2021, Appellant filed the present appeal and the matter was scheduled for an
15 Administrative Hearing.¹⁹ In this appeal, Appellant disagrees with the Department's
16 determination disqualifying Appellant from PUA and FPUC benefits from December 27,
17 2020 to March 13, 2021 (PUA Round 2).²⁰

18 14. With respect to the overpayment issue, upon Appellant filing the present appeal, the
19 Department conducted further review and confirmed with the Department's Benefit
20 Payment Control Unit that Appellant did not receive any payments in federal
21 unemployment benefits.²¹ Therefore, there is no overpayment issue in this matter.

22 V. CONCLUSIONS OF LAW

23 In consideration of the above-stated findings and applicable law, the undersigned issues the
24 following conclusions of law:

25 1. Appellant's employment was not affected as a direct result of COVID-19.

26 ¹⁷ Exhibit 8.

27 ¹⁸ Exhibit 3.

28 ¹⁹ Exhibit 4.

²⁰ *See id.* Claims filed after December 27, 2020 can only be backdated to December 1, 2020. Appellant did not file her online application for weeks beginning March 13, 2020 until after the December 27, 2020 deadline. As discussed during the Administrative Hearing, Appellant's present appeal is only with respect to the Department's July 2, 2021 Determination disqualifying her from PUA and FPUC benefits for the period of December 27, 2020 to March 13, 2021 (Round 2).

²¹ Exhibit 7.

1 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and
2 FPUC benefits are available to “covered individuals.” A “covered individual” is someone who:
3 (1) is not eligible for regular compensation or extended benefits under State or Federal law or
4 pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including
5 an individual who has exhausted all rights to regular unemployment or extended benefits under State
6 or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;²² (2) self-
7 certifies²³ that the individual is unemployed, partially unemployed, or unable or unavailable to work²⁴
8 as a direct result²⁵ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
9 (3) provides required documentation of employment/self-employment within the applicable period of
10 time.²⁶

11 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
12 specifically identifies the COVID-19 qualifying reasons²⁷ as:

- 13 (aa) The individual has been diagnosed with COVID-19 or is
14 experiencing symptoms of COVID-19 and is seeking a medical
15 diagnosis;
- 16 (bb) A member of the individual’s household has been diagnosed with
17 COVID-19;
- 18 (cc) The individual is providing care for a family member or a member
19 of the individual’s household who has been diagnosed with
20 COVID-19;
- 21 (dd) A child or other person in the household for which the individual
22 has primary caregiving responsibility is unable to attend school or
23 another facility that is closed as a direct result of the COVID-19
24 public health emergency and such school or facility care is
25 required for the individual to work;

22 ²² This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
23 unemployment insurance programs in the CNMI.

24 ²³ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
25 perjury.

26 ²⁴ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
27 for benefits. *See* HAR § 12-5-35.

28 ²⁵ Pursuant to 20 CFR § 625.5, unemployment is considered a “direct result” of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

²⁶ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
employment or self-employment, or the planned commencement of employment or self-employment, if he or she
files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31,
2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other
relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

²⁷ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- 1 (ee) The individual is unable to reach the place of employment because
2 of a quarantine imposed as a direct result of the COVID-19 public
3 health emergency;
4 (ff) The individual is unable to reach the place of employment because
5 the individual has been advised by a health care provider to
6 quarantine due to concerns related to COVID-19;
7 (gg) The individual was scheduled to commence employment and does
8 not have a job or is unable to reach the job as a direct result of the
9 COVID-19 public health emergency;
10 (hh) The individual has become the breadwinner or major support for
11 a household because the head of the household has died as a direct
12 result of COVID-19;
13 (ii) The individual has to quit his or her job as a direct result of
14 COVID-19;
15 (jj) The individual's place of employment is closed as a direct result
16 of the COVID-19 public health emergency; or
17 (kk) The individual meets any additional criteria established by the US
18 Secretary of Labor for unemployment assistance under PUA.

19 Additional criteria established by the US Secretary of Labor under item (kk)²⁸, above, includes:

- 20 (1) The individual is an independent contractor who is unemployed
21 (total or partial) or is unable or unavailable to work because of the
22 COVID-19 public health emergency has severely limited his or
23 her ability to continue performing the customary job;
24 (2) The individual has been denied continued unemployment benefits
25 because the individual refused to return to work or accept an offer
26 of work at a worksite that, in either instance, is not in compliance
27 with local, state, or national health and safety standards directly
28 related to COVID-19. This includes, but is not limited to, those
related to facial mask wearing, physical distancing measures, or
the provision of personal protective equipment consistent with
public health guidelines;
(3) An individual provides services to an educational institution or
educational service agency and the individual is unemployed or
partially unemployed because of volatility in the work schedule
that is directly caused by the COVID-19 public health emergency.
This includes, but is not limited to, changes in schedules and
partial closures; and
(4) An individual is an employee and their hours have been reduced
or the individual was laid off as a direct result of the COVID-19
public health emergency.

²⁸ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 In reviewing the filings and testimony of the parties, the undersigned finds that Appellant does
2 not meet the definition of "covered individual" eligible for PUA benefits. As discussed during
3 the Administrative Hearing and stated in her Request for Appeal, Appellant is appealing only the
4 Department's determination disqualifying her from benefits from December 27, 2020 to
5 March 13, 2021.²⁹ Multiple certifications from Appellant's Employer and email communications
6 between Appellant's Employer and the Department, and witnesses' testimony, show that when
7 Appellant was rehired by the Employer it was clear that Appellant's employment contract was
8 only for the period of January 22, 2020 to July 31, 2020.³⁰ Because Appellant's employment with
9 Employer was not going to continue beyond the end of her employment contract, Appellant's
10 continued unemployment after July 31, 2020 was not a direct result of her place of employment
11 closing. Accordingly, the undersigned finds that Appellant's continued unemployment was not
12 affected as a direct result of COVID-19 public health emergency. Therefore, based on the above
13 applicable law, Appellant is not a "covered individual" eligible for PUA benefits from
14 December 27, 2020 to March 13, 2021.

15 VI. DECISION

16 For the reasons stated above, it is ORDERED that:

- 17 1. The CNMI Department of Labor's Disqualifying Determination dated July 2, 2021 is
18 **AFFIRMED**; and
- 19 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of December
20 27, 2020 to March 13, 2021.

21 If a party is aggrieved by this Order and would like to contest the decision, he or she must
22 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
23 written request should be supported by legal, factual, or evidentiary reasons to reopen the
24 decision. The written request must be submitted to the Administrative Hearing Office, either in
25 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
26 hearing@dol.gov.mp.

27 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
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28 ²⁹ See Exhibit 4.

³⁰ See Exhibits 9-13.

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subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 10th day of December, 2021.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer,
Pro Tem



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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In Re Matter of:)	PUA Case No. 21-0144
)	
Esperanza E. Ellis,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on November 18, 2021 and December 10, 2021 at 9:00 a.m. at the Administrative Hearing Office. Appellant Esperanza E. Ellis (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Coordinators Francine Kileleman, Brenda Lynn Sablan, and Chloe Manalo.

Exhibits:

1. Exhibit 1: Copy of Department’s PUA Benefits Rights Information Handbook;
2. Exhibit 2: Copy of Appellant’s Application Snapshot, filed June 19, 2020;
3. Exhibit 3: Copy of Appellant’s Weekly Certifications for the periods of March 15, 2020 to March 21, 2020 and March 29, 2020 to March 13, 2021;
4. Exhibit 4: Copy of Appellant’s Reopened Application Snapshot, filed January 29, 2021;
5. Exhibit 5: Copy of Department’s Disqualifying Determination, dated July 29, 2021;
6. Exhibit 6: Copy of Appellant’s Request to file an Appeal, filed August 3, 2021;
7. Exhibit 7: Copy of the Notice of Hearing issued August 3, 2021;
8. Exhibit 8: Copy of Department’s Notice of Overpayment, dated November 9, 2021;

- 1 9. Exhibit 9: Copy of Department's Amended Notice of Overpayment dated November
2 12, 2021;
- 3 10. Exhibit 10: Copy of Appellant's Employment Certification, dated June 14, 2021;
- 4 11. Exhibit 11: Copy of Appellant's Paystubs
- 5 12. Exhibit 12: Copy of Appellant's (3) Employment Authorization Cards
 - 6 a. Category C18, valid from May 17, 2019 to May 16, 2020;
 - 7 b. Category C18, valid from May 17, 2020 to May 16, 2021;
 - 8 c. Category C18, Valid from June 25, 2021 to June 24, 2022;
- 9 13. Exhibit 13: Copy of Department's SAVE verification results
 - 10 a. Results initiated June 25, 2021;
 - 11 b. Result initiated November 7, 2021;
- 12 14. Exhibit 14: Copy of Department's Audit Summary;
- 13 15. Exhibit 15: Copy of Appellant's Bank Statements; and
- 14 16. Exhibit 16: Copy of Department of Finance Communication.

15 For the reasons stated below, the Department's Determination dated June 29, 2021 is
16 **AFFIRMED**. Claimant is not eligible for benefits for the period of March 15, 2020 to March 13,
17 2021. Further, the Department's Amended Notice of Overpayment dated November 12, 2021 is
18 affirmed. Appellant is overpaid in the amount of \$12,399. Due to fault, Appellant is not entitled
19 to a waiver.

20 II. JURISDICTION

21 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
22 2020 was signed into law creating new temporary federal programs for unemployment benefits
23 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
24 Compensation ("FPUC")². On December 27, 2020, the Continued Assistance for Unemployed
25 Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said
26 federal unemployment insurance programs, which, among other things, extended the PUA and
27 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021

28 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for

1 (“ARPA”) extended the programs to September 6, 2021. The CNMI Department of Labor is
2 charged with the responsibility in administering the above-mentioned programs in the CNMI in
3 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
4 has been designated to preside over appeals of agency decisions.

5 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is / is not
6 established.

7 **III. PROCEDURAL BACKGROUND & ISSUES**

8 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
9 review of Appellant’s application and supporting documents, the Department issued a
10 Disqualifying Determination. On August 3, 2021, Appellant filed the present appeal and the
11 matter was scheduled for a hearing. Subsequently, the Department issued a Notice of
12 Overpayment and Amended Notice of Overpayment in the amount of \$12,399. The issues on
13 appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred
14 and funds should be returned.

15 **IV. FINDINGS OF FACT**

16 In consideration of the evidence provided and credibility of witness testimony, the
17 undersigned issues the following findings of fact:

- 18 1. Prior to the COVID-19 pandemic, Appellant was employed as a Security and Safety
19 Supervisor with G4S Secure Solutions (CNMI) Inc. (“Employer”), located in Saipan.
20 Appellant worked full time and was paid biweekly at the rate of \$8.05 per hour.⁵
- 21 2. Due the economic impact of the pandemic, Employer implemented cost-cutting measures
22 that affected Appellant’s employment. Specifically, effective March 15, 2020, Employer
23 reduced Appellant’s hours to 32 hours or less per week.⁶

24
25
26 _____
Unemployed Workers Act of 2020” or “Continued Assistance Act”).

27 ⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
28 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

⁵ Exhibit 10.

⁶ Exhibits 10-11.

- 1 3. On or around June 14, 2020, Appellant's friend helped her prepare and submit an online
2 application⁷ for unemployment assistance under the PUA and FPUC programs. In the
3 application snapshot,⁸ Appellant self-certified under penalty of perjury that:
- 4 a. Appellant is a U.S. Permanent Resident;
 - 5 b. Appellant's employment was directly affected by COVID-19 when a child or other
6 person in her household for which she has primary caregiving responsibility is
7 unable to attend school or another facility that is closed as a direct result of the
8 COVID-19 public health emergency and such school or facility is required for her
9 to work; and
 - 10 c. Appellant's employment was affected since March 15, 2020.
- 11 4. Subsequently, Appellant submitted weekly certifications⁹ to claim continued benefits.
- 12 a. For weekly certifications in weeks ending March 21, 2020, April 4, 2020, and
13 April 11, 2020, Appellant reported that her employment was affected by COVID-
14 19 because a child or other person in her household for which she has primary
15 caregiving responsibility is unable to attend school or another facility that is closed
16 as a direct result of the COVID-19 public health emergency and such school or
17 facility is required for her to work;
 - 18 b. For weekly certifications for week ending April 18, 2020 through week ending
19 September 19, 2020, Appellant reported that her employment was affected by
20 COVID-19 because her place of employment closed. However, for these weekly
21 certifications Appellant reported earning wages during the week.
- 22 5. The answers provided in Appellant's initial application and weekly certifications were
23 submitted under penalty of perjury.¹⁰ It is Appellant's responsibility to provide true,
24 accurate, and complete answers. To that effect, claimant's must be informed about the
25 program by reading the PUA Benefit Rights Information Handbook¹¹ and other official
26 written material regarding PUA and comply with a PUA coordinator's requests for
27 information in the adjudication phase.

27 ⁷ Exhibit 2.

⁸ *Id.*

⁹ Exhibit 3.

¹⁰ Exhibits 2-3.

¹¹ Exhibit 1.

- 1 6. The answers Appellant provided on her initial and weekly certifications are untrue and
2 inaccurate.
- 3 a. First, Appellant is not a U.S. Permanent Resident. Despite her knowledge of the
4 false statement, there is no showing that Appellant made any real or significant
5 attempts to correct the false statement.
- 6 b. Second, while Appellant is a primary caregiver of a child whose school closed,
7 Appellant testified that the closure did not prevent her from working. For that
8 reason, Appellant certifying statement regarding this COVID-19 qualifying reason
9 is untrue and inaccurate.
- 10 c. Third, Appellant's place of business did not close. While Employer implemented
11 a reduction of hours, the locations they guarded or were stationed at closed.
12 Notably, one station, Fiesta Resort, closed for renovation reasons unrelated to
13 COVID-19. For that reason, Appellant certifying statement regarding this COVID-
14 19 qualifying reason is untrue and inaccurate.
- 15 7. At the time she submitted her PUA application and weekly certifications, Appellant was
16 a Philippines National with employment authorization under Category C18.¹² Appellant's
17 employment authorization was/is valid during the following time periods:
- 18 a. May 17, 2019 through May 16, 2020;¹³
- 19 b. May 17, 2020 through May 16, 2021;¹⁴
- 20 c. June 25, 2021 through June 24, 2022.¹⁵
- 21 8. At the time she submitted her PUA application and weekly certification, Appellant was
22 not a permanent resident, granted asylum, a refugee, an alien paroled for at least one year,
23 an alien pending deportation or removal, an alien granted conditional entry, and Cuban or
24 Haitian entrant, an alien who has been battered or subject to extreme cruelty in the U.S.
25 or a Commonwealth Only Transitional Worker ("CW-1").
- 26 9. Appellant has presented no other documents or evidence to demonstrate that she is a
27 qualified alien.

27 ¹² Exhibits 12-13.

28 ¹³ Exhibit 12(a).

¹⁴ Exhibit 12(b).

¹⁵ Exhibit 12(c).

1 10. Based on the misrepresentations on Appellant's initial and weekly certification(s),
2 Appellant's claim was processed for payment. Specifically, the Department's online
3 system auto-adjudicated Appellant's claim.

4 11. Subsequently, the Department audited Appellant's claim.¹⁶ Based on a copy of the
5 Appellant's relevant bank statements¹⁷ and confirmation of the transaction by the CNMI
6 Department of Finance,¹⁸ Appellant received the following amounts of federal
unemployment benefits:

- 7 a. On August 26, 2020, Appellant received a direct deposit or ACH transaction for
8 \$10,964.00 of PUA and FPUC benefits for weeks ending March 21, 2020 through
9 August 15, 2020;
- 10 b. On September 1, 2020, Appellant received a direct deposit or ACH transaction for
11 \$156.00 of PUA benefits for week ending August 22, 2020;
- 12 c. On September 8, 2020, Appellant received a direct deposit or ACH transaction for
13 \$156.00 of PUA benefits for week ending September 5, 2020;
- 14 d. On September 15, 2020, Appellant received a direct deposit or ACH transaction
15 for \$156.00 of PUA benefits for week ending September 12, 2020;
- 16 e. On September 22, 2020, Appellant received a direct deposit or ACH transaction
17 for \$156.00 of PUA benefits for week ending September 19, 2020;
- 18 f. On April 28, 2021, Appellant received a direct deposit or ACH transaction for
19 \$811.00 of LWA benefits for weeks ending August 1, 2020 through August 15,
2020.

20 12. Appellant received a total amount of \$12,399 in federal unemployment benefits by direct
21 deposit.

22 13. Appellant does not contest receiving the above-mentioned amounts and transactions.

23 14. The overpayment occurred, in part, due to Appellant's fault.

- 24 a. First, Appellant failed to read the PUA benefit rights information handbook –
25 which notified claimants of the eligibility requirements. Instead, Appellant relied
26 on incorrect information to assume all EAD holders were eligible.

27 _____
28 ¹⁶ Exhibit 14.

¹⁷ Exhibit 15.

¹⁸ Exhibit 16.

1 b. Second, Appellant made a number of false or inaccurate statements on her initial
2 and weekly certifications, as stated above.

3 c. Third, Appellant made no significant attempts to correct the known misstatements
4 made in her application and only assumed that the Department would contact her
5 about the discrepancies in this application and documents.

6 15. The overpayment occurred, in part, due to the Department's fault.

7 a. First, the Department's online system automatically paid Appellant before an
8 adjudicator reviewed the case and made a determination.

9 b. Second, despite contradictory statements made throughout the Appellant's initial
10 application, weekly certification, and supporting documents – Appellant's claim
11 was processed for payment without clarification or additional fact-finding.

12 c. Third, the Department failed to initiate or verify Appellant's immigration status
13 before processing her claim for payout.

14 16. On June 25, 2021, the Department entered Appellant's information into the Systematic
15 Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification
16 Division. This database is used to determine the immigration status of PUA applicants so
17 only those entitled to benefits receive them. The SAVE results indicate that Appellant is
18 a non-national of the U.S. who does not have a current immigrant status, had been detained
19 and is not released on an Order of Supervision. This means that Appellant is subject to an
20 administrative final removal order, but cannot be removed to her country at this time. The
21 results further confirm that Appellant's employment authorization is approved under
22 Category C18.¹⁹

23 17. On November 7, 2021, the Department ran a second SAVE verification uploading
24 additional USCIS notices and immigration documents. The second SAVE reconfirmed
25 that Appellant is temporarily authorized to work under Category C18.²⁰

26 18. On July 29, 2021, the Department issued a determination²¹ disqualifying Appellant from
27 PUA and FPUC benefits from March 15, 2020 to March 13, 2021 because the Department
28 found that Appellant was not a qualified alien eligible for PUA benefits.

¹⁹ Exhibit 13(a).

²⁰ Exhibit 13(b).

²¹ Exhibit 5.

- 1 19. On August 3, 2021 Appellant filed the present appeal and the matter was scheduled for an
2 Administrative Hearing.²² The issues on appeal were: (1) whether Appellant was eligible
3 for benefits; and (2) whether any overpayment occurred.
- 4 20. On November 9, 2021, the Department's Benefit Payment Control Unit ("BPC") issued
5 an Initial Notice of Overpayment²³ for the total amount of \$12,399 in federal
6 unemployment benefits for weeks ending March 21, 2020 through September 19, 2020.
7 Specifically, this amounted to \$4,028 in PUA benefits, \$7,560 in FPUC benefits, and \$811
8 in Lost Wages Assistance ("LWA") benefits.
- 9 21. On November 12, 2021, upon Appellant's request for reconsideration, BPC issued an
10 Amended Notice of Overpayment.²⁴ BPC confirmed their findings and made no changes
11 from their initial Notice of Overpayment.
- 12 22. As discussed during the Administrative Hearing, Appellant is appealing the Department's
13 Determination and the Notice of Overpayments because she believes that all EAD holders
14 are qualified and because the Department did not inform her of the overpayment before
15 she spent the money.
- 16 23. Appellant spent all the money she received to pay for her car, rental arrearages, food, and
17 other necessities. While Appellant is currently working, she is only working reduced
18 hours. Appellant is the family breadwinner and part of a single income household. Aside
19 from her regular expenses, Appellant cares for her daughter, who requires certain medical
20 attention and medication. Appellant is financially struggling but agreeable to a payment
21 plan for a nominal monthly amount. Appellant is unable to pay more than \$30 per month
22 without incurring a financial hardship.

21 V. CONCLUSIONS OF LAW

22 In consideration of the above-stated findings and applicable law, the undersigned issues the
23 following conclusions of law:

24 1. Appellant's employment was affected as a direct result of COVID-19.

25 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and
26 FPUC benefits are available to "covered individuals." A "covered individual" is someone who:

27 _____
28 ²² Exhibits 6-7.

²³ Exhibit 8.

²⁴ Exhibit 9.

1 (1) is not eligible for regular compensation or extended benefits under State or Federal law or
2 pandemic emergency unemployment compensation under Section 2107 of the CARES Act,
3 including an individual who has exhausted all rights to regular unemployment or extended
4 benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under
5 Section 2107;²⁵ (2) self-certifies²⁶ that the individual is unemployed, partially unemployed, or
6 unable or unavailable to work²⁷ as a direct result²⁸ of a listed COVID-19 reason in Section
7 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of
8 employment/self-employment within the applicable period of time.²⁹

9 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
10 specifically identifies the COVID-19 qualifying reasons³⁰ as:

- 11 (aa) The individual has been diagnosed with COVID-19 or is
12 experiencing symptoms of COVID-19 and is seeking a medical
13 diagnosis;
- 14 (bb) A member of the individual's household has been diagnosed with
15 COVID-19;
- 16 (cc) The individual is providing care for a family member or a member
17 of the individual's household who has been diagnosed with
18 COVID-19;
- 19 (dd) A child or other person in the household for which the individual
20 has primary caregiving responsibility is unable to attend school or
21 another facility that is closed as a direct result of the COVID-19
22 public health emergency and such school or facility care is
23 required for the individual to work;
- 24 (ee) The individual is unable to reach the place of employment because
25 of a quarantine imposed as a direct result of the COVID-19 public
26 health emergency;

27 ²⁵ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
28 unemployment insurance programs in the CNMI.

29 ²⁶ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
30 perjury.

²⁷ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
for benefits. *See* HAR § 12-5-35.

²⁸ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

²⁹ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
employment or self-employment, or the planned commencement of employment or self-employment, if he or she
files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31,
2021 and receives PUA benefits on or after December 27, 2020. Failure to supply said documents, and any other
relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

³⁰ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- 1 (ff) The individual is unable to reach the place of employment because
2 the individual has been advised by a health care provider to
3 quarantine due to concerns related to COVID-19;
4 (gg) The individual was scheduled to commence employment and does
5 not have a job or is unable to reach the job as a direct result of the
6 COVID-19 public health emergency;
7 (hh) The individual has become the breadwinner or major support for
8 a household because the head of the household has died as a direct
9 result of COVID-19;
10 (ii) The individual has to quit his or her job as a direct result of
11 COVID-19;
12 (jj) The individual's place of employment is closed as a direct result
13 of the COVID-19 public health emergency; or
14 (kk) The individual meets any additional criteria established by the US
15 Secretary of Labor for unemployment assistance under PUA.

16 Additional criteria established by the US Secretary of Labor under item (kk)³¹, above, includes:

- 17 (1) The individual is an independent contractor who is unemployed
18 (total or partial) or is unable or unavailable to work because of the
19 COVID-19 public health emergency has severely limited his or
20 her ability to continue performing the customary job;
21 (2) The individual has been denied continued unemployment benefits
22 because the individual refused to return to work or accept an offer
23 of work at a worksite that, in either instance, is not in compliance
24 with local, state, or national health and safety standards directly
25 related to COVID-19. This includes, but is not limited to, those
26 related to facial mask wearing, physical distancing measures, or
27 the provision of personal protective equipment consistent with
28 public health guidelines;
(3) An individual provides services to an educational institution or
educational service agency and the individual is unemployed or
partially unemployed because of volatility in the work schedule
that is directly caused by the COVID-19 public health emergency.
This includes, but is not limited to, changes in schedules and
partial closures; and
(4) An individual is an employee and their hours have been reduced
or the individual was laid off as a direct result of the COVID-19
public health emergency.

29 While the undersigned recognizes the complexity of the federal guidelines and urgency in
30 submitting applications, the importance of reading the Benefit Rights Information Handbook and

31 See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 providing informed and accurate answers under penalty of perjury cannot be ignored or
2 overlooked. As discussed above, Appellant provided inaccurate and untrue information in her
3 application and weekly certifications when she represented that: (1) her employment was directly
4 affected by COVID-19 because she is the primary caregiver of a child who is unable to attend a
5 school that was closed as a direct result of the COVID-19 public health emergency and such
6 school is required for Appellant to work; and (2) her place of employment closed as a direct result
7 of COVID-19. With respect to her first reason, Appellant was not prevented from working due to
8 her child's school closure. While the school closure created additional burdens, Appellant found
9 a babysitter or brought her daughter to work with her. Appellant admits that she was always able
10 to go to work when scheduled for duty. With respect to her second reason, Appellant's place of
11 employment never closed. This is evidenced by Appellant's testimony and pay stubs during the
12 relevant time periods.

12 While Appellant did not satisfy the COVID-19 qualifying reasons she certified to under the
13 unemployment application and weekly certifications, it appears that her hours and wages were
14 reduced as a result of COVID-19. Specifically, several posts or stations were closed and there
15 was less work to go around for Appellant and coworkers. While Appellant continued to work and
16 receive a paycheck, her hours were reduced from full time to 32 hour or less and her wages were
17 cut accordingly. For that reason, Appellant satisfies item (kk)(4) above.

17 **2. Appellant is not a qualified alien.**

18 PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of
19 eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time
20 relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

- 21 1. An alien admitted for permanent residence under the Immigration and Nationality Act
22 (INA);
- 23 2. An alien granted asylum under § 208 of the INA;
- 24 3. A refugee admitted to the US under § 207 of the INA;
- 25 4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
- 26 5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose
27 removal is being withheld under § 241 (b)(3) of the INA;
- 28 6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee
Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty
in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

1 Further, Section 265 of the Continued Assistance Act provides that a Commonwealth Only
2 Transitional Worker (CW-1) shall be considered a qualified alien for purposes of eligibility under
3 the PUA and FPUC programs. As provided in UIPL 16-20, change 4, page I-16, “CW-1 workers
4 may receive PUA and FPUC if they meet all PUA eligibility requirements beginning with claims
5 filed after December 27, 2020 (*i.e.*, claim effective dates beginning on or after January 3, 2021).”

6 Here, Appellant is a Philippines National with temporary employment authorization. During
7 the relevant time period, Appellant’s employment authorization was granted under Category C18.
8 This demonstrates that Appellant does not have current immigration status, had been detained,
9 but now released on an Order of Supervision. An Order of Supervision document alone does not
10 establish a qualified alien status as an alien whose deportation or removal are being withheld, or
11 any other qualified alien status above. Accordingly, Appellant is not a qualified alien eligible for
12 federal public benefits.

13 **3. Appellant is overpaid and is not entitled to a waiver.**

14 “Benefits shall be paid promptly in accordance with a determination, redetermination, or
15 decision or appeal.”³² However, “[a]ny individual who has received any amount as benefits . . .
16 to which the individual was not entitled shall be liable for the amount unless the overpayment was
17 received without fault on the part of the recipient and its recovery would be against equity and
18 good conscience.”³³ Fault³⁴ is defined as:

- 19 (A) A material statement made by the individual which the
20 individual knew or should have known to be incorrect; or
21 (B) Failure to furnish information which the individual knew or
22 should have known to be material; or
23 (C) Acceptance of a payment which the individual either knew or
24 reasonably could have been expected to know was incorrect.

25 ³² HRS § 383-43.

26 ³³ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
27 to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
28 payment was without fault on the part of the individual and such repayment would be contrary to equity and good
conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

³⁴ HRS 12-5-83.

1 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
2 individual below the poverty line and taking away basic necessities to live. In evaluating equity
3 and good conscience,³⁵ the factors to consider include, but are not limited to:

- 4 (A) Whether notice of a redetermination was given to the claimant,
5 as required ...
6 (B) Hardship to the claimant that the repayment may impose; and
7 (C) The effect, if any, that the repayment will have upon the
8 fulfillment of the objectives of the program.³⁶

9 Considering the discussion above, Appellant was not eligible to receive unemployment
10 benefits and should not have been paid benefits under PUA, FPUC or LWA programs. Moreover,
11 considering that Appellant does not contest the amount listed in the Notice of Overpayment and
12 confirmed receiving the total sum of \$12,399.00—it is clear that the overpayment occurred.

13 Upon review, the undersigned finds that Appellant is not eligible for a waiver to repay the
14 PUA and FPUC benefits. The overpayment occurred, in part, as a result of Appellant’s own fault
15 when she failed to read the Benefit Rights Information Handbook and failed to provide complete
16 and accurate information in the initial application and weekly certifications. On the initial
17 application and weekly certifications, Appellant made several material misrepresentations
18 regarding how her employment was affected by the pandemic. As discussed above, the school
19 closure did not prevent Appellant from working and Appellant’s place of employment did not
20 close. Since Appellant made material statements that she knew or should have known to be
21 incorrection, fault must be assigned to Appellant. Since Appellant is at some fault for this
22 overpayment, Appellant is not eligible for a waiver.

23 VI. DECISION

24 For the reasons stated above, it is ORDERED that:

- 25 1. The CNMI Department of Labor’s Disqualifying Determination, dated June 29, 2021, is
26 **AFFIRMED**;
27 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 15,
28 2020 to March 13, 2021;

29 ³⁵ *Id.*

30 ³⁶ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
31 pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program
32 and availability of funds for eligible or qualified individuals.

- 1 3. The CNMI Department of Labor's Amended Notice of Overpayment, dated November
2 12, 2021, is **AFFIRMED**;
- 3 4. Appellant was overpaid in the total amount of \$12,399 and is not entitled to a waiver for
4 repayment; and
- 5 5. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit by
6 December 31, 2021 to finalize a payment plan consistent with this Order and all
7 applicable rules.

8 If a party is aggrieved by this Order and would like to contest the decision, he or she must
9 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
10 written request should be supported by legal, factual, or evidentiary reasons to reopen the
11 decision. The written request must be submitted to the Administrative Hearing Office, either in
12 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
13 hearing@dol.gov.mp.

14 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
15 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
16 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
17 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
18 filings fees, and filing deadlines for judicial review will be as established by the applicable law
19 and court rule.

20 So ordered this **10th** day of December, 2021.

21 /s/

22 **JACQUELINE A. NICOLAS**
23 Administrative Hearing Officer
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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

12 In Re Matter of:) PUA Case No. 21-0151
13)
14 Ethel R. Caballero,)
15)
16 Appellant,) **ADMINISTRATIVE ORDER**
17)
18 v.)
19)
20 CNMI Department of Labor,)
21 Division of Employment Services-PUA,)
22)
23 Appellee.)

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On August 27, 2021, Appellant filed a Request to Appeal of a Notice of Overpayment issued by the Appellee on March 30, 2021. Pursuant to Appellant’s Request to Appeal, this matter was scheduled for an Administrative Hearing for December 16, 2021 at 9:00 a.m. On December 9, 2021, the Department filed a Motion to Dismiss the appeal. Therein, the Department states that Appellant is appealing a system-generated Notice of Overpayment that was issued in error. The Department also confirmed that, upon further review, the Department found that no overpayment had occurred.

In consideration of the above, the undersigned finds that there are no issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative hearing scheduled for December 16, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 10th day of December, 2021.

/s/

Catherine J. Cachero
Pro Tem Administrative Hearing Officer