

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



COMMONWEALTH REGISTER

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FEBRUARY 15, 2024**

COMMONWEALTH REGISTER

VOLUME 46

NUMBER 01

February 15, 2024

ADOPTED

Public Notice of Certification and Adoption
To the Building Safety Code Rules and Regulations

Department of Public Works 050740

ORDERS

PUA Case No. 23-0231
Subject: Administrative Order
In the Matter of: Alvaro Samonte v. CNMI Dept. of Labor,
Div. of Employment Svcs - PUA

Department of Labor 050742



Commonwealth of the Northern Mariana Islands
Office of the Secretary of Public Works
2nd floor - Oleai Joeten Commercial Center
Saipan, MP 96950



Ray N. Yumul
Secretary

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION TO THE
AMENDMENTS MADE TO THE BUILDING SAFETY CODE RULE AND
REGULATIONS OF THE DEPARTMENT OF PUBLIC WOKS, DIVISION OF
BUILDING SAFETY CODE

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED
AMENDMENTS TO NMIAC CHAPTER 155-10 TO UPDATE THE SCHEDULE
OF FEES AND ADOPTION OF PROVISIONS

Volume 45, Number 05, pp 050603-050627, of November 30, 2023

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Public Works (DPW), HEREBY ADOPTS AS Regulations to its Building Safety Code Rules and Regulations which were published in the Commonwealth Registrar at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9102(a)(1). The Department of Public Works announced that it intended to adopt them as permanent and now does so. These amendments will become effective ten days after publication of a Notice of Adoption in the Commonwealth Register, 1 CMC § 9105(b). [A true copy is attached]. I also certify by signature below that:

As published, such adopted regulations are a true, complete and correct copy of the reference Proposed Regulations,

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATION FROM PROPOSED REGULATIONS, IF ANY: None

AUTHORITY: The Agency, the Department of Public Works, through its Secretary, is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the statute governing his activities. 1 CMC § 2404. Under the Building Safety Code, “[t]he building safety official shall issue regulations as required under 2 CMC § 7153.” 2 CMC § 7122 (h). However, under the Flood Plain Management Program, the Secretary “shall promulgate such regulations as are necessary to bring the Commonwealth of the Northern Mariana Islands into full compliance with the provisions of the National Flood Insurance Act of 1968 [42 U.S.C. § 4001 et seq.].” 2 CMC § 7148 (b).

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

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the Department of Public Works has considered fully all written and oral submissions respecting the Proposed Amendments to its Building Safety Code Rules and Regulations. Upon this adoption of these regulations the Department of Public Works, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reason for and against its adoption, incorporated therein and its reason for overruling the consideration urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filled comments.

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

Certified and Ordered by:



YVONNE B. TENORIO
Acting, Building Safety Official


01/22/2024
DATE



RAY N. YUMUL, Secretary
Department of Public Works

01/22/2024
DATE

Filed and
Recorded by:

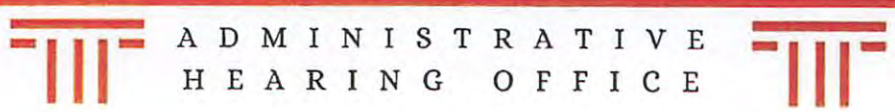


ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

1-28-2024
DATE



CNMI DEPARTMENT OF LABOR



ADMINISTRATIVE
HEARING OFFICE

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4			
5	In Re Matter of:)	PUA Case No. 23-0231
6	Alvaro Samonte,)	
7)	
8	Appellant,)	ADMINISTRATIVE ORDER
9)	
10	v.)	
11)	
12	CNMI Department of Labor,)	
	Division of Employment Services-PUA,)	
)	
	Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on October 26, 2023 at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan. Appellant Alvaro Samonte (“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 Program Coordinator Frank Sablan, PUA Program Team Leader Kimberly DeGracia, and PUA Program Supervisor Joseph Pangelinan. There were no other witnesses that provided testimony at the hearing. A list of the documents that were admitted into evidence at the hearing is appended to the end of this Order.

For the reasons stated below, the Department’s Determinations dated January 19, 2023 are **AFFIRMED**. Appellant is not eligible for benefits for the period of March 22, 2020 to April 11, 2020. Further, the Department’s Amended Notice of Overpayment, dated June 30, 2023 is also **AFFIRMED**. Appellant was overpaid in the total amount of **\$25,311.00**. Appellant is not entitled to a waiver for repayment.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security (“CARES”) Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits

1 called Pandemic Unemployment Assistance (“PUA”)¹ and Federal Pandemic Unemployment
2 Compensation (“FPUC”).² On December 27, 2020, the Continued Assistance for Unemployed
3 Workers Act of 2020 (“Continued Assistance Act”) amended and created new provisions of said
4 federal unemployment insurance programs, which, among other things, extended the PUA and
5 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
6 (“ARPA”) extended the programs to September 6, 2021. The CNMI Department of Labor is
7 charged with the responsibility in administering the above-mentioned programs in the CNMI in
8 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
9 has been designated to preside over appeals of agency decisions.

10 Upon review of the records, Appellant’s appeal two Disqualifying Determinations dated
11 January 19, 2023 and the Amended Notice of Overpayment dated June 30, 2023 is timely filed.
12 Accordingly, jurisdiction is established.

13 III. PROCEDURAL BACKGROUND & ISSUES

14 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
15 review of Appellant’s application and supporting documents, the Department issued
16 Disqualifying Determinations on January 19, 2023 and an Amended Notice of Overpayment on
17 June 30, 2023.

18 On February 1, 2023, Appellant filed the present appeal and the matter was scheduled for a
19 hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal is
20 timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment to
21 Appellant occurred and funds should be returned.

22 IV. FINDINGS OF FACT

23 In consideration of the evidence provided and credibility of witnesses testimony, the
24 undersigned issues the following findings of fact:

- 25 1. Prior to the COVID-19 pandemic, Appellant, a U.S. permanent resident, was employed as

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

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

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

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.

1 a full-time Religious Worker or Minister at Marianas Bible Fellowship Center, Inc.
2 (“Employer”), located in Susupe Village, Saipan, from December 2008.⁵ As a Religious
3 Worker, Appellant was paid \$700.00 monthly and received free housing and utilities as
4 compensation.⁶

5 2. Appellant’s Employer closed from March 2020 to May 2020 because of the COVID-19
6 public health emergency advisory and directive from the CNMI government.⁷

7 3. On or around June 22, 2020, Appellant applied for unemployment assistance under the
8 PUA and FPUC programs administered by the Department.⁸ In this initial application,⁹
9 Appellant self-certified under penalty of perjury that:

- 10 a. Appellant’s net earnings for each quarter in 2019 was \$2,100.00 per quarter;
- 11 b. Appellant’s gross salary was \$700.00 per month;
- 12 c. Appellant’s employment was closed as a direct result of the COVID-19 public
13 health emergency;
- 14 d. Other COVID-19 reasons not listed in the application directly affected his
15 employment; specifically, Appellant was furloughed because of COVID-19;
- 16 e. Appellant’s employment was affected since March 8, 2020; and
- 17 f. Appellant expected to return to work on June 28, 2020.¹⁰

18 4. Subsequently, Appellant submitted weekly certifications to claim continued benefits from
19 March 8, 2020 to December 5, 2020.¹¹

20 a. In each weekly certification from March 8, 2020 to May 30, 2020, Appellant self-
21 certified under penalty of perjury that his employment was still affected by
22 COVID-19 because his place of employment is closed and did not work or earn
23 wages.¹²

24 b. In each weekly certification from May 31, 2020 to July 25, 2020 and from
25 August 2, 2020 to December 5, 2020, Appellant self-certified under penalty of
26 perjury that his employment was still affected by COVID-19 because he was

27 ⁵ Exhibit 7.

28 ⁶ *Id.*

⁷ *Id.*

⁸ Exhibit 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Exhibit 2.

¹² *Id.*

1 scheduled to commence employment and does not have a job or he is unable to
2 reach the job as a direct result of the COVID-19 public health emergency and he
3 worked for Employer and earned \$175.00 for each work week claimed.¹³

4 c. In each weekly certification from July 26, 2020 to August 1, 2020, Appellant self-
5 certified under penalty of perjury that: (i) His employment was still affected by
6 COVID-19 because of COVID-19 government protocols, his place of employment
7 was not fully operational – just 50% capacity – because most congregation
8 members of Employer were still fearful of the pandemic and so he only performed
9 a few hours on Sunday for ministry and he worked for Employer and earned
\$175.00 for each work week claimed.¹⁴

10 5. On February 26, 2021, Appellant filed an application for continued benefits.¹⁵ In this
11 application,¹⁶ Appellant self-certified under penalty of perjury that:

- 12 a. He is scheduled to commence employment and does not have a job or he is unable
13 to reach the job as a direct result of the COVID-19 public health emergency;
14 b. He is still employed but on reduced hours;
15 c. His employment was affected since February 14, 2021; and
16 d. His anticipated recall date was March 7, 2021.¹⁷

17 6. In all of Appellant's applications and certifications, Appellant acknowledged that he
18 understood that the self-certifications were under penalty of perjury.¹⁸ Appellant further
19 acknowledged that it was his responsibility to read the PUA Handbook and other official,
20 published materials regarding the program so that he can provide complete and accurate
21 information in his claims.¹⁹ Therefore, it is Appellant's responsibility to be informed about
the program and provide true, accurate, and complete answers.

22 7. Based on evidence and testimony provided at the hearing, Appellant's self-certifications
23 under his applications and weekly certifications are inaccurate and untrue. Specifically,
24 while his Employer closed the church from March 2020 to May 2020, Appellant's
25

26 ¹³ Exhibit 2.

27 ¹⁴ *Id.*

¹⁵ *See* Exhibit 1.

28 ¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Exhibits 1 and 2.

¹⁹ *See* Exhibits 1 and 2.

1 compensation and benefits were not affected by COVID-19 because he continued to
2 receive his normal monthly salary and received his benefits (i.e., housing and utilities).

3 8. In 2020, the PUA program relied on each claimant's self-certifications and did not require
4 claimants to submit documents to substantiate their claims, unless audited or requested.

5 9. Based on the inaccurate and untrue information that Appellant self-certified under penalty
6 and perjury in his applications and weekly certifications, Appellant's claims were
7 processed for payment. As demonstrated by an internal audit,²⁰ Appellant received 13
8 direct deposits of benefit payments in the total amount of \$25,311.00 for work weeks
9 ending March 14, 2020 to December 5, 2020.²¹

10 10. On October 20, 2021, the Department issued a determination disqualifying Appellant from
11 benefits from May 31, 2020 to September 4, 2021 because the Department found that
12 Appellant received his customary wages during this time. Appellant has not appealed this
13 disqualifying determination.

14 11. On December 30, 2022, the Department's Benefit Payment Control Unit ("BPC") issued
15 an Initial Notice of Overpayment for the total amount of \$11,250.00 for weeks ending
16 June 20, 2020 to December 5, 2020.²² Specifically, this amounted to \$7,200.00 in PUA
17 benefits, \$3,240.00 in FPUC benefits, and \$810.00 in Lost Wages Assistance ("LWA")
18 benefits.²³ This overpayment notice was a result of Department's Benefit Payment Control
19 Unit's ("BPC's") targeted audit and investigation.²⁴

20 12. On January 18, 2023, the Department issued two Determinations disqualifying Appellant
21 from PUA and FPUC benefits from March 7, 2020 to March 21, 2020 because the
22 Department found that based on its investigation and audit, Appellant committed fraud by
23 making false statements and nondisclosure of his earnings.²⁵ Appellant has not appealed
24 this disqualifying determination.

25 13. On January 19, 2023, the Department issued another 11 determinations disqualifying
26 Appellant from benefits from March 22, 2020 to June 13, 2020 because Appellant

27 ²⁰ Exhibit 10.

²¹ *Id.*

28 ²² Exhibit 15.

²³ *Id.*

²⁴ Exhibit 16.

²⁵ *Id.*

committed fraud by making false statements and nondisclosure of his earnings.²⁶

1
2 14. In the January 19, 2023 Determinations, and all other determinations, it stated that
3 Appellant had 10 days to file an appeal. All of Determinations stated that, "This means
4 your appeal must be received or postmarked by 01/29/2023. If you do not make that
5 deadline, you lose the right to appeal this determination."²⁷ (Emphasis in original.) The
6 Determinations also stated that appeal should be filed by email or postal mail to PO Box
10007, Saipan MP 96950.²⁸

7 15. On January 20, 2023, Appellant mailed only 2 of the 11 Determinations, dated January 19,
8 2023, effective from March 2, 2020 to April 11, 2020.²⁹ Therein, Appellant marked and
9 signed that he appeals the disqualification. Appellant sent the signed Determinations via
10 postal mail to the correct mailing address, but he addressed the mail to the "Investigations
11 Unit" of the Department.³⁰ Appellant did not sign and send in the other Determinations or
12 submit the Request to File an Appeal Form.

13 16. On February 1, 2023, the Department received Appellant's two signed/marked
14 Determinations. Upon receipt, the Administrative Hearing Office called, emailed and
15 instructed Appellant to complete and file the Request for Appeal form.³¹

16 17. On February 1, 2023, Appellant mailed his completed Request for Appeal form, again
17 addressed to the correct address, but to the attention of the "Investigations Unit".
18 Appellant Request to Appeal form was received by the Department on February 21, 2023.
19 Appellant only enclosed the same two signed Determinations, dated January 19, 2023,
20 disqualification effective from March 2, 2020 to April 11, 2020.³²

21 18. While his appeal was pending, on June 30, 2023, the BPC Unit issued an Amended Notice
22 of Overpayment for the total amount of \$25,311.00 for weeks ending March 14, 2020 to
23 December 5, 2020.³³ Specifically, this amounted to \$13,401.00 in PUA benefits,
24 \$11,010.00 in FPUC benefits, and \$900.00 in LWA benefits.³⁴

25 ²⁶ *Id.*

26 ²⁷ *Id.*

27 ²⁸ *Id.*

28 ²⁹ Exhibit 4.

³⁰ Exhibit 5.

³¹ Exhibit 6.

³² See Exhibit 4.

³³ Exhibit 14.

³⁴ *Id.*

1 19. On June 30, 2023, Appellant received and acknowledged the Amended Notice of
2 Overpayment, and he signed and marked that he requested an appeal of the Amended
3 Notice of Overpayment with the Administrative Hearing Office.³⁵

4 20. Appellant is appealing the two Department's January 19, 2023 Determinations and the
5 June 30, 2023 Amended Notice of Overpayment because he believes that he is eligible for
6 benefits because he did not work during the claimed weeks and the \$700 per month
7 received was "financial assistance" only.

8 21. As discussed in the Amended Notice of Overpayment and during the Administrative
9 Hearing, the Department stands firm on its Determinations and Notice of Overpayment
10 and contests a waiver of the overpayment.

11 22. Appellant has fully returned to work for Employer, receiving \$700.00 per month in
12 compensation with the benefits of paid housing and utilities. Appellant has spent majority
13 of the benefits he received. Appellant's household income exceeds his necessary
14 expenses. Appellant would be able to enter into a practice repayment plan without
15 incurring financial hardship.

16 V. CONCLUSIONS OF LAW

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

19 **1. Appellant's appeal of the January 19, 2023 Determinations effective March 22, 2020**
20 **to April 11, 2020 and the Amended Notice of Overpayment are timely filed.**

21 Generally, an appeal should be filed within ten days after the Notice of Determination was
22 issued or served to the claimant. However, the Department may extend the period to thirty days
23 by a showing of good cause.³⁶ Good cause means: (1) illness or disability; (2) keeping an
24 appointment for a job interview; (3) attending a funeral of a family member; and (4) any other
25 reason which would prevent a reasonable person from complying as directed.³⁷

26 Here, on January 19, 2023, the Department issued multiple Determinations disqualifying
27 Appellant from benefits. Therein, the Determinations all stated that Appellant had 10 days to file
28 an appeal. The Determinations said, "This means your appeal **must be received or postmarked**
by 01/29/2023." (Emphasis in original.) The Determinations stated that the appeal should be filed

³⁵ See *id.*

³⁶ HI. Rev. Statute § 383-38(a).

³⁷ HAR § 12-5-81(j).

1 by email or postal mail to P.O. Box 10007, Saipan, MP 96950. On January 20, 2023, Appellant
2 mailed back only two of the Determinations dated January 19, 2023, disqualification effective
3 March 22, 2020 to April 11, 2020. Appellant marked and signed these two Determinations that
4 he appeals. Appellant sent the signed Determinations to the correct mailing address, but he
5 addressed the mail to the “Investigations Unit”, rather than the Administrative Hearing Office.
6 The Department received Appellant’s signed Determinations on February 1, 2023. Upon receipt,
7 the Administrative Hearing Office called, emailed, and instructed Appellant to complete and file
8 the Request for Appeal form. On the same date, February 1, 2023, Appellant mailed his Request
9 for Appeal form, again addressed correctly, but to the attention of the “Investigations Unit”.
Appellant’s Request to Appeal was received by the Department on February 21, 2023.

10 Generally, the failure to read and follow instructions is not good cause for an extension.
11 However, in consideration of Appellant’s attempts to file before the deadline by mailing his
12 signed Determinations and by completing his Request to Appeal form by the next day after the
13 Administrative Hearing Office sent the form, the undersigned finds good cause to extend the filing
14 deadline to 30 days. In light of this extension, Appellant’s appeal of the two January 19, 2023
Determinations is timely filed.

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

16 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and
17 FPUC benefits are available to “covered individuals”. A “covered individual” is someone who:
18 (1) is not eligible for regular compensation or extended benefits under state or federal law or
19 pandemic emergency unemployment compensation under Section 2107 of the CARES Act,
20 including an individual who has exhausted all rights to regular unemployment or extended
21 benefits under state or federal law or Pandemic Emergency Unemployment Compensation under
22 Section 2107;³⁸ (2) self-certifies³⁹ that the individual is unemployed, partially unemployed, or
23 unable or unavailable to work⁴⁰ as a direct result⁴¹ of a listed COVID-19 reason in Section
24 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required employment/self-employment

25
26 ³⁸ 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.

27 ³⁹ PUA program utilizes applications and weekly certifications where claimants self-certify under penalty of perjury.

28 ⁴⁰ 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.

⁴¹ 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.

1 document within the applicable period of time.⁴²

2 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
3 specifically identifies the COVID-19 qualifying reasons⁴³ as:

- 4 (aa) The individual has been diagnosed with COVID-19 or is
5 experiencing symptoms of COVID-19 and is seeking a medical
6 diagnosis;
- 7 (bb) A member of the individual's household has been diagnosed with
8 COVID-19;
- 9 (cc) The individual is providing care for a family member or a member
10 of the individual's household who has been diagnosed with
11 COVID-19;
- 12 (dd) A child or other person in the household for which the individual
13 has primary caregiving responsibility is unable to attend school or
14 another facility that is closed as a direct result of the COVID-19
15 public health emergency and such school or facility care is
16 required for the individual to work;
- 17 (ee) The individual is unable to reach the place of employment because
18 of a quarantine imposed as a direct result of the COVID-19 public
19 health emergency;
- 20 (ff) The individual is unable to reach the place of employment because
21 the individual has been advised by a health care provider to
22 quarantine due to concerns related to COVID-19;
- 23 (gg) The individual was scheduled to commence employment and does
24 not have a job or is unable to reach the job as a direct result of the
25 COVID-19 public health emergency;
- 26 (hh) The individual has become the breadwinner or major support for
27 a household because the head of the household has died as a direct
28 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.

23 Additional criteria established by the US Secretary of Labor under item (kk)⁴⁴, above, includes:

- 24 (1) The individual is an independent contractor who is unemployed
25 (total or partial) or is unable or unavailable to work because of the

26 ⁴² Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
27 employment or self-employment, or the planned commencement of employment or self-employment, if he or she
28 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).

⁴³ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

⁴⁴ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

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- 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, on June 22, 2020, Appellant submitted an initial application for PUA and FPUC benefits self-certifying under penalty of perjury, that his employment was affected as a direct result of COVID-19 because “his employment was closed as a direct result of the COVID-19 public health emergency” and he was “furloughed” because of COVID-19 public health emergency, effective March 8, 2020, and he expected to return to work on June 28, 2020. For the weeks beginning March 8, 2020 to December 5, 2020, Appellant submitted weekly certifications. From March 8, 2020 to May 30, 2020, Appellant self-certified that his employment was still closed, he did not work, and he earned zero wages. From May 31, 2020 to July 25, 2020 and August 2, 2020 to December 5, 2020, Appellant self-certified that he was scheduled to commence employment and does not have a job or he is unable to reach the job as a direct result of the COVID-19 public health emergency, and he worked for Employer and earned \$175.00 for each work week claimed. In weekly certification for July 26, 2020 to August 1, 2020, Appellant self-certified that his place of employment was not fully operational and while he worked for Employer, he earned \$175.00 only for each week. In his subsequent application to reopen or continue claims, filed on February 26, 2021, Appellant self-certification was that he was scheduled to commence employment and does not have a job or he is unable to reach the job as a direct result of the COVID-19 public health emergency, he is employed but on reduced hours, and his employment was affected since February 14, 2021.

1 Based on evidence and testimony provided, Appellant's self-certifications under penalty of
2 perjury in his initial application, weekly certifications, and subsequent application are inaccurate
3 and untrue. Employer's Certifications support Appellant's claim that he was furloughed
4 beginning March 2020 because the church was closed due to COVID-19 public health emergency.
5 However, the Employer Certifications consistently stated that Employer closed only from March
6 2020 to May 2020. Employer's Certifications confirmed, and Appellant testified that he received
7 \$700.00 monthly and he continued to receive free housing and utilities. The Employer's
8 Certification dated June 23, 2020 also stated that this was "monthly allowance or salary". Later
9 Employer Certifications called the monthly \$700.00 as "compassionate financial assistance,
10 stimulus or help to him". When questioned at the Administrative Hearing, Appellant argued that
11 he did not earn that income because he did not perform work because the church was closed, and
12 that the \$700.00 was "financial assistance" from the Employer.

13 The undersigned disagrees with Appellant and finds that Appellant mischaracterizes this
14 \$700.00. Appellant received from Employer the same compensation of \$700.00 and housing and
15 utility benefits. Appellant's Employer closed the church only from March 2020 to May 2020, not
16 any longer as inaccurately reported by Appellant. Appellant's hours were never reduced; he may
17 not have been able to perform his work at the church because it was closed from March 2020 to
18 May 2020, but he continued to receive the same compensation and benefits from Employer during
19 that time and thereafter. Since Appellant's compensation and other employment benefits
20 continued, he remained unaffected during the COVID-19 public health emergency. Based on the
21 evidence provided and applicable law, Appellant does not meet any of the COVID-19 qualifying
22 reasons for the time he was disqualified for benefits because his employment was not affected as
23 a direct result of the COVID-19 public health emergency. Accordingly, Appellant is not eligible
24 to receive PUA and FPUC benefits.

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

26 "Benefits shall be paid promptly in accordance with a determination, redetermination, or
27 decision or appeal."⁴⁵ However, "[a]ny individual who has received any amount as benefits . . .
28 to which the individual was not entitled shall be liable for the amount unless the overpayment was

⁴⁵ HRS § 383-43.

1 received without fault on the part of the recipient and its recovery would be against equity and
2 good conscience.”⁴⁶ Fault⁴⁷ is defined as:

- 3 (A) A material statement made by the individual which the
4 individual knew or should have known to be incorrect; or
- 5 (B) Failure to furnish information which the individual knew or
6 should have known to be material; or
- 7 (C) Acceptance of a payment which the individual either knew or
8 reasonably could have been expected to know was incorrect.

9 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
10 individual below the poverty line and taking away basic necessities to live. In evaluating equity
11 and good conscience,⁴⁸ the factors to consider include, but are not limited to:

- 12 (A) Whether notice of a redetermination was given to the claimant,
13 as required ...
- 14 (B) Hardship to the claimant that the repayment may impose; and
- 15 (C) The effect, if any, that the repayment will have upon the
16 fulfillment of the objectives of the program.⁴⁹

17 Considering the discussion above, Appellant was not eligible to receive employment benefits
18 and should not have been paid benefits under PUA or FPUC programs. Moreover, based on the
19 evidence and testimony that Appellant received a total sum of \$25,311.00 despite being ineligible,
20 it is also clear that an overpayment to Appellant occurred.

21 Based on the evidence provided and applicable law, Appellant is not entitled to a waiver of
22 the overpayment. First, the overpayment occurred because of the Appellant’s fault. While
23 Appellant may have been confused that the church closed and he did not perform any work, he
24 did not earn the \$700.00 that he received from Employer. Still, Appellant submitted self-
25 certifications under penalty of perjury inaccurate and untrue information that the church was
26 closed for a longer period of time than what Employer’s Certification indicated, that Appellant’s

27 ⁴⁶ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
28 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.

⁴⁷ HRS § 12-5-83.

⁴⁸ *Id.*

⁴⁹ 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.

1 hours were reduced when there is no evidence of reduction in hours, that he was scheduled to
2 commence work, but was unable, and that his earning was zero or \$175.00 per week. As discussed
3 above, Appellant continued to receive the same compensation and benefits from Employer.
4 Second, recovery of the overpayment from Appellant would not be contrary to equity and good
5 conscience. Appellant has returned to work and his household income exceeds his necessary
6 expenses. Appellant has spent majority of the benefits he received, but Appellant would not be
7 failing below the poverty line if ordered to report to the BPC and enter into practical repayment
8 plan. Accordingly, a waiver of the overpayment amount is not justified or warranted.

9 VI. DECISION

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


- 11 1. The Department's Determinations, dated January 19, 2023, are **AFFIRMED**;
- 12 2. The Appellant is **NOT ELIGIBLE** to receive benefits from March 22, 2020 to
13 April 11, 2020;
- 14 3. The Department's Amended Notice of Overpayment, dated June 30, 2023, is
15 **AFFIRMED**;
- 16 4. Appellant was overpaid in the total amount of **\$25,311.00** for weeks ending
17 March 14, 2020 to December 5, 2020;
- 18 5. Appellant is not entitled to a waiver for repayment; and
- 19 6. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to
20 discuss options for repayment, in accordance with the applicable rules.

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
28 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,

1 filings fees, and filing deadlines for judicial review will be as established by the applicable law
2 and court rule.

3 So ordered this 12th day of January, 2024.

4 
5 **CATHERINE J. CACHERO**
6 *Pro Tem* Administrative Hearing Officer

7 **Documents Admitted into Evidence**

- 8 1. Exhibit 1: Copies of Appellant's Application Snapshots, filed June 22, 2020 and
9 February 26, 2021;
- 10 2. Exhibit 2: Copies of Appellant's Weekly Certifications (online versions) for weeks
11 beginning March 8, 2020 and ending December 5, 2020;
- 12 3. Exhibit 3: Copy of the PUA Benefit Rights Information Handbook;
- 13 4. Exhibit 4: Copy of Appellant's Request to file an Appeal and supporting documents, filed
14 February 22, 2023;
- 15 5. Exhibit 5: Copies of Appellant's Post-marked Envelopes to CNMI Department of Labor,
16 postmark dated January 20, 2023 and February 1, 2023;
- 17 6. Exhibit 6: Copy of Email Between Appellant and Administrative Hearing Office, dated
18 February 1, 2023;
- 19 7. Exhibit 7: Copies of Appellant's Employment Certifications issued by Marianas Bible
20 Fellowship Center, Inc. ("Employer") on June 23, 2020, January 22, 2023, and
21 June 7, 2023;
- 22 8. Exhibit 8; Copies of Appellant's Paycheck Stubs from Employer, dated January 2020 to
23 December 2020;
- 24 9. Exhibit 9: Copies of Appellant's Forms 1040CM, Northern Mariana Territorial Income
25 Tax Returns, for years 2019 and 2020;
- 26 10. Exhibit 10: Copy of Department's Benefit Payment Control Unit Audit Sheet;
- 27 11. Exhibit 11: Copy of Department's Disqualifying Determination, dated October 20, 2021;
- 28 12. Exhibit 12: Copies of Department's Case Note, dated October 20, 2021;;
13. Exhibit 13: Copy of Department's Case Note, dated June 6, 2023;
14. Exhibit 14: Copy of Department's Amended Notice of Overpayment, dated June 30, 2023;

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- 15. Exhibit 15: Copy of Department's Initial Notice of Overpayment, dated December 30, 2022; and
- 16. Exhibit 16: Copies of Department's 13 Disqualifying Determinations, dated January 18, 2023 and January 19, 2023.