



MILWAUKEE OFFICE

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February 12, 2021

Department of Workforce Development
Attn: Secretary Amy Pechacek
201 E. Washington Ave.
Madison, WI 53707

Dear Madame Secretary,

Several issues regarding the payment and coordination of UI benefits (regular benefits, extended benefits, PEUC, PUA, FPUC) have come to our attention recently. As you may be aware, our offices represent many UI claimants.

The issues we are seeing are serious, systemic, and have a brutal effect on thousands of Wisconsin claimants already staggering from this pandemic. We hope that through collaboration and in bringing these issues to the Department's attention, serious steps will be taken to prevent further mismanagement, waste of Department resources, and unnecessary harm to Wisconsin residents. The issues we are seeing are as follows:

1. The recent status of rideshare drivers as *employees* has resulted in unnecessary, harsh, and premature PUA/FPUC overpayments before Department has made the required determination for eligibility of regular UI benefits.

Recently, several Lyft™ and Uber™ drivers, or “rideshare drivers”, have received Initial Determinations holding their driving as covered employment for regular UI benefits. This is a change from prior decisions holding the rideshare drivers to be independent contractors. That result is a very welcome clarification of the Department's policy on this important issue

However, these initial determinations are causing very serious problems because of the Department's subsequent implementation of their status as employees. Upon determining that rideshare driving is covered employment, the Department issues overpayment decisions for both previously paid PUA benefits (of which gig worker/independent contractors are eligible), **and** for the corresponding \$600 weekly FPUC benefits.

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tel 920-233-6521 | toll-free 800-236-1128

tel 262-635-8836 | toll-free 800-242-5840

UI LOCAL OFFICE #14
P.O. BOX 7905
MADISON, WI 53707

UCB-28 NOTICE OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION OVERPAYMENT

Total Overpayment: 10200.00

Date: 11/13/20

SSN: 888-88-8704

ROBERT J MINELLI
2613 E ALLERTON AVE
SAINT FRANCIS WI 53235-5640

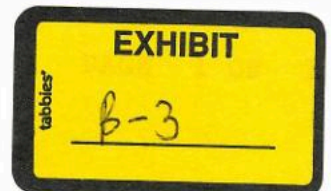


As a result of an Overpayment Decision or Notice dated 11/12/20 you are also overpaid Federal Pandemic Unemployment Compensation (FPUC) for the following weeks.

CALENDAR WEEK ENDING	WEEK NUMBER	FPUC PAYMENT
04/04/20	14/20	600.00
04/11/20	15/20	600.00
04/18/20	16/20	600.00
04/25/20	17/20	600.00
05/02/20	18/20	600.00
05/09/20	19/20	600.00
05/16/20	20/20	600.00
05/23/20	21/20	600.00
05/30/20	22/20	600.00
06/06/20	23/20	600.00
06/13/20	24/20	600.00
06/20/20	25/20	600.00
06/27/20	26/20	600.00
07/04/20	27/20	600.00
07/11/20	28/20	600.00
07/18/20	29/20	600.00
07/25/20	30/20	600.00

This results in a total overpayment of 10200.00 that must be repaid. This amount is in addition to the overpayment shown on the related decision or notice.

See objection and repayment procedures on the reverse side.



MADISON HEARING OFFICE
P.O. Box 7975
Madison, WI 53707

**APPEAL TRIBUNAL
DECISION**

State of Wisconsin
Department of Workforce Development
Unemployment Insurance Division

Telephone: (608) 266-8010
Fax: (608) 327-6498

Hearing No. 20010770MD

Mailed to:

In the matter of:

Employee: JUSTIN G BLACKBURN,
RESPONDENT

B.C. & S.S. No.: 05/***-**-6343

vs.

Employer: SCHOOL DISTRICT OF MONROE,
APPELLANT

JUSTIN G BLACKBURN
N3336 JOY DEL RD
MONROE WI 53566-9266

UI Account No.: 696242

APPEAL RIGHTS

SEE THE DATE BELOW FOR THE TIME LIMIT.

IF YOU ARE APPEALING BECAUSE YOU FAILED TO APPEAR FOR THE SCHEDULED HEARING AND ARE REQUESTING A NEW HEARING, FOLLOW THE FAILURE TO APPEAR PROCEDURES ON THE REVERSE SIDE.

IF YOU ARE APPEALING FOR ANY OTHER REASON, YOU MUST FOLLOW THE PETITION PROCEDURES ON THE REVERSE SIDE.

IF YOU DO NOT UNDERSTAND THE PROCEDURES, PLEASE CALL THE UI HEARING OFFICE FOR ASSISTANCE.

DECISION: SEE ATTACHED DECISION WHICH REVERSES THE INITIAL DETERMINATION.

Employee appeared by:

Employer appeared by:

IN PERSON

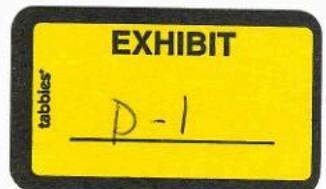
JULIE FRIE
DIRECTOR OF BUSINESS SERVICES

Administrative Law Judge ERIC J VOLKMANN	Dated and Mailed OCTOBER 12, 2020	Petition Must Be Received or Postmarked By: NOVEMBER 2, 2020
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(SEE REVERSE FOR ADDITIONAL INFORMATION)

Decision mailed to:

JUSTIN G BLACKBURN, N3336 JOY DEL RD, MONROE, WI 53566-9266
SCHOOL DISTRICT OF MONROE, ATTN: RON OLSON, 925 16TH AVENUE, # 3, MONROE,
WI 53566-1763



20010770MD

THE DEPARTMENT'S DETERMINATION HELD: that the employee worked for an educational institution in other than an instructional, research, or principal administrative capacity, for an educational institution during an academic year or term, and that as of week 24 of 2020 (June 7 through 13), the employee did not have reasonable assurance of performing such services in the next academic year or term. As a result, benefits were allowed.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

FINDINGS OF FACT and CONCLUSIONS OF LAW

The claimant worked for "several years" as a substitute teacher's aide, working with children who required special education services, for the employer, a school district. The job entailed taking students who could not work in the regular classroom into another room and giving them individual attention. The claimant provided this service for children from middle school to high school. He helped them with all subjects. The employment for the 2019-2020 school year allowed 27.5 hours per week. Pay was \$215.91 per day, without benefits. The daily work schedule matched the school schedule with the employee working through June 2, as his students were no longer attending classes due to the covid virus. The other teachers worked through June 5. He had breaks on the same days the school schedule allowed breaks.

The claimant was called a substitute even though he had the job every school day for several years.

In May of 2020, the employer offered to the claimant a job for the 2020-2021 school year. The job title was teacher, which involved teaching the same students. The job duties were the same as the work he previously performed for the employer, except the job consisted of 7.5 hours per day rather than 5.5 hours in his previous work. His teaching room was the same one as in previous years. The workday started at the same time but lasted two more hours per day. Pay was \$274.87 per day, plus benefits. Workdays would match the school year calendar. He returned to work with the other teachers on August 25 (week 35).

The issue to be decided is whether the employee worked for an educational institution during the second semester of the 2019-2020 school year, and whether the employee had reasonable assurance of performing similar work after the summer vacation.

The employee contended that he should be eligible for unemployment insurance benefits as of week 24 of 2020. This contention cannot be sustained.



Wisconsin Stat. § 108.02(22m) provides:

"School year employee" means an employee of an educational institution or an educational service agency, or an employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution, who performs services under an employment contract which does not require the performance of services on a year-round basis.

Here, as the employee worked for an educational institution in the second semester of the 2019-2020 school year and was not required to work on a year-round basis, he was a "School year employee" under the statute.

Wisconsin Stat. § 108.04(17)(g) provides:

(g) A school year employee of an educational institution who performs services as described in par. (a) or (d) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for any educational institution in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that he or she will perform the services described in par. (a) or (d) for any educational institution in the period immediately following the vacation period or holiday recess.

In this case, the employee worked for an educational institution in the spring semester of 2020. He was then offered the same position, but as a teacher rather than a "substitute" for the fall semester of 2020. Accordingly, he had reasonable assurance that he would perform similar services in the period immediately following the summer break.

In comparing the new position to the customary job, the Administrative Code provides that such services are reasonably similar if the gross weekly wage and total number of hours per week are more than 80 percent of the gross weekly wage and average number of hours worked per week in the academic year or term which preceded the week of unemployment. If such services are not reasonably similar, the claimant is eligible for benefits, if otherwise qualified. Wis. Admin. Code § DWD 132.04.

Here, it was not contested that the two positions were identical in duties. The new title was as a teacher rather than a substitute. It offered more wages. It also offered



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full benefits, and the previous position did not. Consequently, the job offer satisfies the statute.

Wisconsin Stat. § 108.04(17)(j) provides:

(j) A school year employee who did not establish a benefit year prior to becoming ineligible to receive benefits under pars. (a) to (i) may establish a benefit year on or after that date if the school year employee qualifies to establish a benefit year under s. 108.06 (2) (a), but the wages paid the school year employee for any week during which pars. (a) to (i) apply shall be excluded from the school year employee's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week during which pars. (a) to (i) apply. A school year employee who established a benefit year prior to becoming ineligible to receive benefits under pars. (a) to (i) may receive benefits based on employment with other employers during the benefit year only if he or she has base period wages from such employment sufficient to qualify for benefits under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) for any week during which pars. (a) to (i) apply.

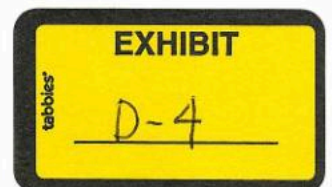
Here, it appears the employee established a new benefit year before he became ineligible at the time of the summer break. As a result, he can only use earnings from other employers to qualify for benefits.

Wisconsin Stat. § 108.04(4) provides:

QUALIFYING CONDITIONS. (a) A claimant is not eligible to start a benefit year unless the claimant has combined base period wages equal to at least 35 times the claimant's weekly benefit rate under s. 108.05(1), including combined base period wages equal to at least 4 times the claimant's weekly benefit rate under s. 108.05(1) in one or more quarters outside of the quarter within the claimant's base period in which the claimant has the highest base period wages.

(b) There shall be counted toward the wages required by par. (a) any federal service, within the relevant period, which is assigned to Wisconsin under an agreement pursuant to 5 USC 8501 to 8525.

(c) An employee is not eligible to start a new benefit year unless, subsequent to the start of the employee's most recent benefit year in which benefits were to be paid to the employee,



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the employee has performed services and earned wages for those services equal to at least 8 times the employee's latest weekly benefit rate under s. 108.05(1) that was payable to the employee in the employee's most recent benefit year in employment or other work covered by the unemployment insurance law of any state or the federal government.

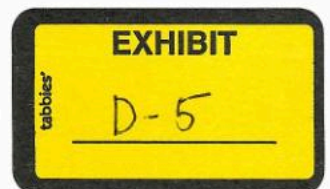
In this case, the department's record indicates that the employee's earnings from employers other than the customary employer were not enough to meet qualifying requirements to pay benefits. Therefore, the employee was not eligible for benefits in weeks 24 through 34 of 2020.

Having determined that the employee is ineligible for benefits in weeks 24 through 34 of 2020 because he had reasonable assurance of further educational work in the next school year, it must also be determined whether he has received any benefits in error, the amount of those overpaid benefits, and whether those benefits must be repaid to the department.

Generally, an employee who receives unemployment insurance benefits in error is required to repay those benefits to the department. However, current law provides that recovery of the overpaid benefits shall be waived if the overpayment occurred as the result of departmental error and if the overpayment was not caused by the employee's fault or by a false statement or misrepresentation by the employee.

Department error is defined as an error relating to computing or paying benefits, resulting from mathematical mistake, misapplication or misinterpretation of law or mistake of evidentiary fact; or misinformation provided by the department to an employee, on which the employee relied. Department error does not include a computer malfunction or programming error, an error transmitting data to or from a financial institution, a typographical or keying error, a bookkeeping or other payment processing error, any action by the department resulting from a false statement or representation by an individual, or any action by the department resulting from an unauthorized manipulation of an electronic system from within or outside the department.

Here, the employee was paid benefits totaling \$3,330 for weeks 24 through 32 2020 in error. Those benefits were paid because the initial determination was made without full information as to the underlying issue or was made based on a differing interpretation of the available information. The overpayment was not caused by any departmental error and repayment of the benefits cannot be waived. Moreover, the erroneous payment of benefits was not due to any error on the part of the department because the decision to initially pay benefits was appropriate, given the information then available.



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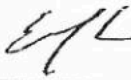
The appeal tribunal therefore finds that the employee performed services in an instructional, research, or principal administrative capacity for an educational institution during an academic year or term, and that as of week 24 of 2020, had reasonable assurance of performing such services in the next academic year or term, within the meaning of Wis. Stat. § 108.04(17)(a).

The appeal tribunal further finds that the employee was paid benefits in the amount of \$3,330 for which the employee was not eligible and to which the employee was not entitled, within the meaning of Wis. Stat. § 108.03(1) and that the entire amount must be repaid to the department because the overpayment was not because of any error by the department and/or was caused partially or wholly by the employee, within the meaning of Wis. Stats. §§ 108.22(8)(a) and (c).

DECISION

The department's determination is reversed. Accordingly, during weeks 24 through 34 of 2020, the employee is ineligible for benefits based upon any wages paid for work performed for the employer. The employee is required to repay the sum of \$3,330 to the Unemployment Reserve Fund.

APPEAL TRIBUNAL



By: _____
Eric J. Volkmann
Administrative Law Judge

NOTE: Repayment instructions for the amount that must be repaid will be mailed after this decision becomes final. The department will withhold benefits due for future weeks of unemployment in order to offset overpayments of unemployment and other special benefit programs that are due to the state, another state or to the federal government.

Contact the Unemployment Insurance Division, Collections Unit, P.O. Box 7888, Madison, WI 53707, to establish an agreement to repay the overpayment.

The decision also results in an overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits that must be repaid. The employee will receive a separate "Notice of Federal Pandemic Unemployment Compensation Overpayment, Form UCB-28" regarding the amount of FPUC benefits that must be repaid.



SEE REVERSE SIDE FOR
IMPORTANT INFORMATION

Department of Workforce Development
Unemployment Insurance Division



SS # 000-00-6343

UI LO #: 05
UI Acct. #:

DETERMINATION

JUSTIN G BLACKBURN
N3336 JOY DEL RD
MONROE WI 53566-9266

Issue Week: 24/20	Applicable
Week Ending: 06/13/20	Wisconsin Law: PUB. L. 116-136; 20 CFR 5 625

FINDINGS AND DETERMINATION OF THE DEPUTY:

THE CLAIMANT HAS NOT EXHAUSTED ALL UNEMPLOYMENT INSURANCE, PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION, AND EXTENDED BENEFITS PAYABLE FOR THE BENEFIT YEAR ENDING 03/13/21.

EFFECT

PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) IS DENIED.



Deputy ADJUDICATOR 2204	Dated 10/24/20	Decision final unless an appeal is received or postmarked by: 11/09/20
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The PUA overpayment decisions are resulting in demands in excess of \$10,000. Attached are several examples of the initial determinations finding coverage and the contemporaneous overpayment decisions. Exemplars of the FPUC overpayment notices are also attached. See Exhibits A and B.

While the Department is issuing these hefty determinations of overpayment, they are not immediately or simultaneously issuing new benefit computations based on the initial determinations of covered employment. The result is that the Department demands repayment of huge amounts of money with **no** decision whether the finding of covered employment entitles the claimants to regular UI benefits. The Department's behavior results in the worst of both worlds: immediate ending of PUA with an outrageous demand for repayment of PUC benefits, without any indication that Department will (presumably) compute regular UI benefits (which carries the concomitant \$600 FPUC). To demand immediate repayment of PUA and FPUC without determining the availability of regular UI benefits (apparently because of the Department's recent change in policy) is unconscionable.

The Department's statutory obligation is to pay regular UI benefits "when due," which means as soon as administratively feasible. There is no excuse for the Department to issue a decision finding overpayment of PUA or FPUC benefits before issuing a benefit computation for regular benefits. The Department cannot logically determine that PUA and the FPUC supplement were overpaid before the Department affirmatively decides whether the claimant **is eligible for regular benefits**. It is the **eligibility** for regular benefits that makes one ineligible for PUA due to lack of exhaustion of regular benefits.

2. PUA denials which cite to a lack of regular benefit or PEUC exhaustion when, in fact, the Department has denied regular benefits.

A similar problem exists, generally, with PUA determinations that a claimant is not an "exhaustee" at the same time the Department has determined the claimant is not eligible for regular or extended benefits. For PUA purposes, "ineligibility" is a form of "exhaustion." No denial of a PUA claim on the grounds of "non-exhaustion" can logically occur until the Department has determined the claimant is actually eligible for regular benefits. See Exhibits C and D.

Perhaps this problem is caused by the false equivalence of a regular benefit disqualification (but a benefit entitlement theoretically remaining), with the PUA "exhaustion" required. The PUA requirement is **not** that the claimant have successfully claimed the entire regular benefit computation (thereby exhausting it). The PUA requirement is simply that the claimant be **ineligible** for regular or extended benefits. CARES §2102(a)(3)(A)(i). The ineligibility can come from a separation issue disqualification for current benefits.

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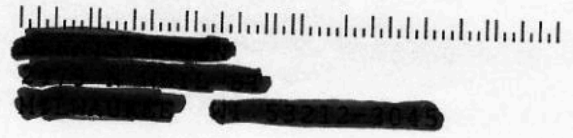
tel 262-635-8836 | toll-free 800-242-5840



SS # 988-06-1585

UI LO #: 14
UI Acct. #:

COMPUTATION



Issue Week: 13/20	Applicable
Week Ending: 03/28/20	Wisconsin Law: PUB. L. 116-136; 20 CFR 5 625

FINDINGS AND DETERMINATION OF THE DEPUTY:

AS OF WEEK ENDING 03/28/20, YOU INDICATED THAT YOU WERE UNEMPLOYED, PARTIALLY UNEMPLOYED OR UNABLE OR UNAVAILABLE TO WORK BECAUSE YOUR PLACE OF EMPLOYMENT IS CLOSED AS A DIRECT RESULT OF THE COVID-19 PUBLIC HEALTH EMERGENCY.

YOU INDICATED YOU ARE OR WERE SELF-EMPLOYED OR AN INDEPENDENT CONTRACTOR ON YOUR APPLICATION FOR PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA). THE DEPARTMENT DOES NOT HAVE WAGE RECORDS FROM A SUBJECT EMPLOYER ON FILE FOR THAT WORK. IF THE WORK PERFORMED IN THIS ROLE IS LATER DETERMINED TO BE FOR AN EMPLOYER SUBJECT TO THE UNEMPLOYMENT INSURANCE LAW, YOU MAY NOT QUALIFY FOR PUA AND COULD BE SUBJECT TO AN OVERPAYMENT OF PUA BENEFITS. THIS PUA DETERMINATION IS NOT BINDING FOR DETERMINING EMPLOYEE STATUS FOR THE PURPOSES OF THE WISCONSIN UNEMPLOYMENT INSURANCE LAW, WIS. STAT. CH. 108.

THE PUA WEEKLY BENEFIT RATE IS CALCULATED USING 4% OF 2019 HIGH QUARTER WAGES BUT SHALL NOT BE LESS THAN THE MINIMUM PUA WEEKLY BENEFIT RATE OR EXCEED THE MAXIMUM PUA BENEFIT RATE.

- WAGES, AS USED IN THE COMPUTATION OF PUA ENTITLEMENT, MEAN
- GROSS WAGES PAID TO A WORKER
 - NET INCOME FOR A SELF-EMPLOYED INDIVIDUAL FROM SERVICES PERFORMED IN SELF-EMPLOYMENT

NET INCOME FOR THE TAX YEAR REPORTED BY A SELF-EMPLOYED INDIVIDUAL IS ALLOCATED EQUALLY BETWEEN THE QUARTERS TO COMPUTE THE PUA WEEKLY BENEFIT RATE UNLESS THE DOCUMENTATION SUBMITTED IN ACCORDANCE WITH 20 CFR 625.6(E) SUPPORTS A DIFFERENT ALLOCATION.

EFFECT

YOU QUALIFY FOR PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) AT A WEEKLY BENEFIT

DEPUTY ADJUDICATOR 2237	DATE MAILED 07/02/20	DECISION FINAL UNLESS AN OBJECTION IS FILED BY: 07/16/20
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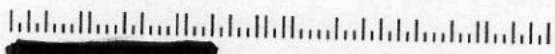




SS # 000-00-1585

UI LO #: 14
UI Acct. #:

COMPUTATION



Issue Week: 13/20	Applicable
Week Ending: 03/28/20	Wisconsin Law: PUB. L. 116-136; 20 CFR § 625

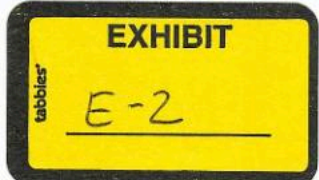
FINDINGS AND DETERMINATION OF THE DEPUTY:

RATE OF \$164.00.

THE PANDEMIC ASSISTANCE PERIOD GOES THROUGH WEEK ENDING 12/26/20.
YOU ARE ELIGIBLE FOR UP TO 39 WEEKS OF PUA.

LOGON TO MY.UNEMPLOYMENT.WISCONSIN.GOV TO FILE WEEKLY CLAIMS.
WEEKLY CLAIM CERTIFICATIONS FOR ADDITIONAL WEEKS MUST BE FILED
WITHIN 14 DAYS OF THE END OF THE CALENDAR WEEK YOU ARE CLAIMING.
HOWEVER, YOU CANNOT FILE YOUR CLAIM FOR A WEEK UNTIL AFTER THE
WEEK HAS ENDED.

MAKE SURE YOUR PAYMENT METHOD IS UP TO DATE BEFORE FILING WEEKLY
CLAIMS. TO VIEW OR UPDATE YOUR INFORMATION, GO TO THE UNEMPLOYMENT
INSURANCE SERVICES MENU ON YOUR DASHBOARD.



DEPUTY ADJUDICATOR 2237	DATE MAILED 07/02/20	DECISION FINAL UNLESS AN OBJECTION IS FILED BY: 07/16/20
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SS # ~~000-00~~-1585

UI LO #: 14
UI Acct. #:

AMENDED DETERMINATION



Issue Week:	13/20	Applicable
Week Ending:	03/28/20	Wisconsin Law: PUB. L. 116-136; 20 CFR § 625

FINDINGS AND DETERMINATION OF THE DEPUTY:

THE DECISION DATED 07/02/20 WAS ISSUED IN ERROR AND IS HEREBY SET ASIDE.
THE CLAIMANT IS ELIGIBLE TO BEGIN A NEW BENEFIT YEAR IN WISCONSIN AS OF 03/22/20.

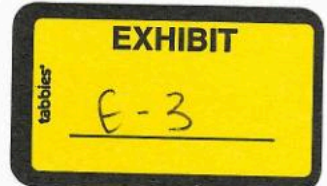
EFFECT

PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) IS DENIED.

THIS DETERMINATION RESULTS IN AN ADJUSTMENT TO YOUR WEEKLY BENEFITS. BENEFITS NOW DUE FOR THE WEEK(S) ENDING 03/28/20-10/10/20 UNDER THE PANDEMIC UNEMPLOYMENT ASSISTANCE PROGRAM IN THE AMOUNT OF \$3,212.00 ARE BEING WITHHELD TO OFFSET PAYMENTS FOR THE SAME WEEK(S) THAT WERE MADE UNDER THE UNEMPLOYMENT INSURANCE PROGRAM.

THIS DETERMINATION ALSO RESULTS IN AN OVERPAYMENT OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION (FPUC) BENEFITS THAT MUST BE REPAID. YOU WILL RECEIVE A SEPARATE "UCB-28 NOTICE OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION OVERPAYMENT" REGARDING THE AMOUNT OF FPUC BENEFITS THAT MUST BE REPAID.

THE PREVIOUSLY ISSUED MONETARY COMPUTATION IS HEREBY SET ASIDE. THE CLAIMANT'S BENEFIT YEAR DOES NOT BEGIN ON 03/22/20.



Deputy ADJUDICATOR 4048	Dated 10/24/20	Decision final unless an appeal is received or postmarked by: 11/09/20
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SS # ~~000-00~~-2171

UI LO #: 14
UI Acct. #: 796476

DETERMINATION

JACQUELINE S HOFF
21724 W BIRCHWOOD DR
LANNON WI 53046-9724

SELECT A SERVICE LLC
SAS RETAIL MERCHANDISING
C/O THOMAS & CO
PO BOX 280100
NASHVILLE TN 37228-0100

Issue Week:	13/20	Applicable Wisconsin Law: 108.04(2) & DWD 128.01
Week Ending:	03/28/20	

FINDINGS AND DETERMINATION OF THE DEPUTY:

THE CLAIMANT IS NOT OR WAS NOT ABLE AND AVAILABLE FOR SUITABLE WORK.

THE CLAIMANT IS/WAS ON A LEAVE OF ABSENCE OR HER EMPLOYMENT IS/WAS SUSPENDED.

BASED ON THE BEST AVAILABLE INFORMATION, THE CLAIMANT WAS ON A PERSONAL LEAVE OF ABSENCE DUE TO LACK OF DAYCARE. THEREFORE, NOT ELIGIBLE FOR UNEMPLOYMENT BENEFITS. THE EMPLOYER FAILED TO RESPOND TO THE DEPARTMENT'S REQUEST FOR INFORMATION.

EFFECT

BENEFITS ARE DENIED FROM 03/22/20 THROUGH 05/30/20.

THIS DECISION RESULTS IN AN OVERPAYMENT OF \$ 2120.00 WHICH MUST BE REPAYED BY THE CLAIMANT.

SEND A CHECK OR MONEY ORDER, PAYABLE TO UNEMPLOYMENT INSURANCE, TO THE UNEMPLOYMENT INSURANCE DIVISION, P.O. BOX 7888, MADISON, WI 53707.

THE DEPARTMENT WILL WITHHOLD UNEMPLOYMENT BENEFITS PAYABLE FOR FUTURE WEEKS TO OFFSET OVERPAYMENTS OF UNEMPLOYMENT INSURANCE AND OTHER SPECIAL PROGRAM BENEFITS THAT MUST BE REPAYED TO THIS STATE, TO ANOTHER STATE, OR TO THE FEDERAL GOVERNMENT.

RECOVERY OF THE OVERPAYMENT IS NOT WAIVED UNDER S. 108.22(8)(C) BECAUSE THE ERRONEOUS PAYMENT(S) WERE NOT THE RESULT OF DEPARTMENTAL ERROR AND/OR THEY WERE THE RESULT OF THE CLAIMANT'S FAILURE TO PROVIDE CORRECT AND COMPLETE INFORMATION TO THE DEPARTMENT.

THE DEPARTMENT MAY ISSUE A WARRANT TO SECURE THE DEBT FOR THE STATE OF WISCONSIN. A WARRANT IS A PUBLIC RECORD OF A LIEN ON YOUR PROPERTY AND MAY AFFECT YOUR CREDIT RATING.



Deputy ADJUDICATOR 0592	Dated 09/30/20	Decision final unless an appeal is received or postmarked by: 10/14/20
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SS # 000-00-2171

UI LO #: 14
UI Acct. #: 796476

DETERMINATION

JACQUELINE S HOFF
21724 W BIRCHWOOD DR
LANNON WI 53046-9724

SELECT A SERVICE LLC
SAS RETAIL MERCHANDISING
C/O THOMAS & CO
PO BOX 280100
NASHVILLE TN 37228-0100

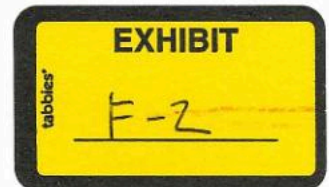
Issue Week: 13/20	Applicable
Week Ending: 03/28/20	Wisconsin Law: 108.04(2) & DWD 128.01

FINDINGS AND DETERMINATION OF THE DEPUTY:

THIS OVERPAYMENT AMOUNT INCLUDES BENEFITS WHICH WERE WITHHELD AND TRANSFERRED TO THE INTERNAL REVENUE SERVICE FOR FEDERAL TAXES AND/OR THE WISCONSIN DEPARTMENT OF REVENUE FOR STATE TAXES.

THIS DETERMINATION ALSO RESULTS IN AN OVERPAYMENT OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION (FPUC) BENEFITS THAT MUST BE REPAYED. YOU WILL RECEIVE A SEPARATE "UCB-28 NOTICE OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION OVERPAYMENT" REGARDING THE AMOUNT OF FPUC BENEFITS THAT MUST BE REPAYED.

YOU MAY QUALIFY FOR PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) IF YOU MEET CERTAIN CONDITIONS. GO TO [HTTPS://DWD.WISCONSIN.GOV/UIBEN/PUA/](https://dwd.wisconsin.gov/uiben/pua/) FOR MORE INFORMATION. TO APPLY, LOGON TO [MY.UNEMPLOYMENT.WISCONSIN.GOV](https://my.unemployment.wisconsin.gov) AND USE THE LINK ON YOUR DASHBOARD TO APPLY FOR PUA ONLINE.



Deputy ADJUDICATOR 0592	Dated 09/30/20	Decision final unless an appeal is received or postmarked by: 10/14/20
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MILWAUKEE OFFICE

633 West Wisconsin Avenue, Suite 2000, Milwaukee, WI 53203
tel 414-278-7722 | toll-free 888-278-0633 | fax 414-278-7126
new caller/ intake 855-947-2529 | www.legalaction.org

3. Premature FPUC overpayments without a determination that claimant is ineligible for **both** PUA and regular benefits.

In addition to the rideshare driver problems, we are also seeing overpayment decisions of the \$600 FPUC supplement issued based on a later determination of ineligibility for regular benefits, before any analysis is done to determine whether the individual would qualify for PUA. See Exhibits E and F. The overpayment might be because of a reversal on appeal or some alleged new information. The problem is that because FPUC can supplement either regular, or extended, or UCFE, or UCX, or PUA benefits, the purported overpayment of the \$600 supplement cannot be made until there is **no** eligibility for any benefit program. The U.S. Department of Labor guidance, most recently UIPL 9-21, Attachment 1, at I-3, clearly state that the FPUC supplement is payable for weeks prior to July 31, 2020 if there is eligibility for any program.

As with the first problem -- the determination of PUA overpayment upon finding that the gig work supporting PUA is now determined to be covered employment -- it is not logically possible to determine if the \$600 FPUC supplement was overpaid without determining that the claimant is ineligible for all PUA, regular, and extended benefits. See Exhibit B.

No overpayment decision should be issued until the Department has made a determination that **none of the various programs**, not regular UI, not EB, not FPUC, and not PUA, allow the immediate payment of benefits for past the prior weeks for which benefits were paid. These decisions are the Department's job. It is not the claimants' responsibility to raise these issues through an appeal of an overpayment decision.

There are three specific administrative actions that could be taken that do not involve any change of policy but simply a change in the work processes:

1. Do not issue any PUA or FPUC overpayment decisions for the rideshare drivers until the Department has issued a Benefit Computation and an Initial Determination with respect to eligibility for regular benefits.
2. Do not issue any PUA denials based on "non-exhaustion" without actually determining that the claim is not eligible for regular benefits. The regular benefit ineligibility may be caused by a separation issue, which does not disqualify the claimant otherwise eligible for PUA

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3. Do not issue any FPUC overpayment decision until the Department has adjudicated ineligibility for regular, extended, FEUC, PUA benefits.

The previous State administration showed little regard for the critical role UI benefits plays in sustaining families. It may well be that a culture has developed among line workers and their supervisors that the denial of benefits is a goal. Whatever the cause, issuing overpayment determinations for PUC benefits before determining whether any overpayment occurred results in a “deny first, then delay payment” model that is not consistent with the Department’s duty to pay benefits as promptly as administratively feasible.

These are not errors caused by work load. They are failures of work processes. They are failures of training. They are failures of Adjudicators to understand their role in the system. Ultimately, they are failures of Department leadership to take seriously their duty to pay benefits as promptly as administratively feasible. They demand the attention of the top leadership of the Department.

I welcome the opportunity to discuss our concerns with you further. We are hopeful we can work together to address issues we are seeing for our clients while also reducing inefficiencies in the already overwhelmed system.

Very sincerely,

Brittany Schoenick

Brittany D. Schoenick, Attorney

On behalf:

Legal Action of Wisconsin, Inc.

633 W. Wisconsin Ave., Ste 2000

Milwaukee, WI 53203

414-274-3070

bds@legalaction.org

Enclosures:

- Exhibit A: Finding PUA eligible but ineligible due to UI but issuing overpayment.
- Exhibit B: Finding PUA eligible then ineligible due to UI but issuing overpayment.
- Exhibit C: Denied UI, yet thereafter denied PUA for not exhausting benefits.
- Exhibit D: Denied UI by ALJ at hearing, yet thereafter denied PUA for not exhausting benefits.
- Exhibit E: Denial of PUA due to alleged UI eligibility yet issued a FPUC overpayment.
- Exhibit F: Denial of UI, issued a FPUC overpayment before determination of PUA.

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SS # ~~000-00~~-9510

UI LO #: 14
UI Acct. #:

COMPUTATION

|||||
CINDY M MARTINSON
6913 W MAIN ST
MILWAUKEE WI 53214-1649

Issue Week: 13/20	Applicable
Week Ending: 03/28/20	Wisconsin Law: PUB. L. 116-136; 20 CFR 625

FINDINGS AND DETERMINATION OF THE DEPUTY:

AS OF WEEK ENDING 03/28/20, YOU INDICATED THAT YOU WERE UNEMPLOYED, PARTIALLY UNEMPLOYED OR UNABLE OR UNAVAILABLE TO WORK BECAUSE YOU ARE AN INDEPENDENT CONTRACTOR WHOSE OPERATIONS ARE SUSPENDED (OR SIGNIFICANTLY REDUCED) DUE TO THE COVID-19 PUBLIC HEALTH EMERGENCY.

INCOME USED TO CALCULATE THE PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) WEEKLY BENEFIT RATE:

THE PUA WEEKLY BENEFIT RATE IS CALCULATED USING 4% OF 2019 HIGH QUARTER WAGES BUT SHALL NOT BE LESS THAN THE MINIMUM PUA WEEKLY BENEFIT RATE OR EXCEED THE MAXIMUM PUA BENEFIT RATE.

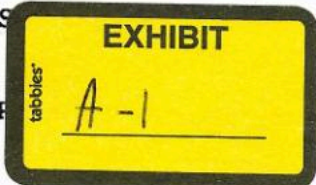
- WAGES, AS USED IN THE COMPUTATION OF PUA ENTITLEMENT, MEAN
- GROSS WAGES PAID TO A WORKER
 - NET INCOME FOR A SELF-EMPLOYED INDIVIDUAL FROM SERVICES PERFORMED IN SELF-EMPLOYMENT

NET INCOME FOR THE TAX YEAR REPORTED BY A SELF-EMPLOYED INDIVIDUAL IS ALLOCATED EQUALLY BETWEEN THE QUARTERS TO COMPUTE THE PUA WEEKLY BENEFIT RATE UNLESS THE DOCUMENTATION SUBMITTED IN ACCORDANCE WITH 20 CFR 625.6(E) SUPPORTS A DIFFERENT ALLOCATION.

EFFECT

YOU QUALIFY FOR PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) AT A WEEKLY BENEFIT RATE OF \$163.00.

IF YOU OBJECT TO THE WEEKLY BENEFIT RATE, PROOF OF 2019 EARNINGS (TAX FORMS, INCLUDING SCHEDULES C, F, OR K-1, IF APPLICABLE, AND W-2'S) MUST BE SUBMITTED BEFORE 12/26/20. A REDETERMINATION MAY BE ISSUED IF YOUR WAGES AND/OR NET SELF-EMPLOYMENT INCOME ARE SUFFICIENT TO PERMIT A HIGHER PUA WEEKLY BENEFIT RATE.



DEPUTY ADJUDICATOR 2213	DATE MAILED 07/28/20	DECISION FINAL UNLESS AN OBJECTION IS FILED BY: 08/11/20
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SS # ~~888-88~~-9510

UI LO #: 14
UI Acct. #:

REDETERMINATION

|||||
CINDY M MARTINSON
6913 W MAIN ST
MILWAUKEE WI 53214-1649

Issue Week: 13/20	Applicable Wisconsin Law: PUB. L. 116-136; 20 CFR ^s 625
Week Ending: 03/28/20	

FINDINGS AND DETERMINATION OF THE DEPUTY:

THE DECISION DATED 07/28/20 IS SET ASIDE AND REISSUED DUE TO SUBSEQUENT INFORMATION.

THE CLAIMANT HAS NOT EXHAUSTED ALL UNEMPLOYMENT INSURANCE, PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION, AND EXTENDED BENEFITS PAYABLE FOR THE BENEFIT YEAR ENDING 03/20/21.

EFFECT

PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA) IS DENIED.

THIS DETERMINATION RESULTS IN AN ADJUSTMENT TO YOUR WEEKLY BENEFITS. BENEFITS NOW DUE FOR THE WEEK(S) ENDING 03/28/20 - 11/21/20 UNDER THE UNEMPLOYMENT INSURANCE PROGRAM IN THE AMOUNT OF \$5,620.00 ARE BEING WITHHELD TO OFFSET PAYMENTS FOR THE SAME WEEK(S) THAT WERE MADE UNDER THE PANDEMIC UNEMPLOYMENT ASSISTANCE PROGRAM.



Deputy ADJUDICATOR 5038	Dated 01/13/21	Decision final unless an appeal is received or postmarked by: 01/27/21
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SS # ~~999-88~~-8704

UI LO #: 14
UI Acct. #: 231369

DETERMINATION

ROBERT J MINELLI
2613 E ALLERTON AVE
SAINT FRANCIS WI 53235-5640

LYFT INC
STE 5000
185 BERRY ST
SAN FRANCISCO CA 94107-2503

Issue Week: 12/20	Applicable Wisconsin Law: 108.02(12)(A)&(BM)
Week Ending: 03/21/20	

FINDINGS AND DETERMINATION OF THE DEPUTY:

ALL OF THE SERVICES PERFORMED FOR THE EMPLOYER WERE PERFORMED AS AN EMPLOYEE.

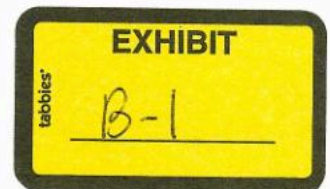
THE CLAIMANT WAS AN EMPLOYEE BECAUSE HE WAS NOT FREE OF THE EMPLOYER'S DIRECTION AND CONTROL, AND/OR HAS NOT MET AT LEAST SIX OF THE FOLLOWING CONDITIONS NEEDED TO ESTABLISH THAT HE WAS AN INDEPENDENT CONTRACTOR. - THE INDIVIDUAL ADVERTISES OR OTHERWISE AFFIRMATIVELY HOLDS OUT AS BEING IN BUSINESS. - THE INDIVIDUAL MAINTAINS HIS OWN OFFICE OR PERFORMS MOST OF THE SERVICES IN A FACILITY OR LOCATION CHOSEN BY THE INDIVIDUAL, AND USES HIS OWN EQUIPMENT OR MATERIALS IN PERFORMING THE SERVICES. - THE INDIVIDUAL OPERATES UNDER MULTIPLE CONTRACTS WITH ONE OR MORE EMPLOYING UNITS TO PERFORM SPECIFIC SERVICES. - THE INDIVIDUAL INCURS THE MAIN EXPENSES RELATED TO THE SERVICES THAT HE PERFORMS UNDER CONTRACT. - THE INDIVIDUAL IS OBLIGATED TO REDO UNSATISFACTORY WORK FOR NO ADDITIONAL COMPENSATION OR IS SUBJECT TO A MONETARY PENALTY FOR UNSATISFACTORY WORK. - THE SERVICES PERFORMED BY THE INDIVIDUAL DO NOT DIRECTLY RELATE TO THE EMPLOYING UNIT RETAINING THE SERVICES. - THE INDIVIDUAL MAY REALIZE A PROFIT OR SUFFER A LOSS UNDER CONTRACTS TO PERFORM SUCH SERVICES. - THE INDIVIDUAL HAS RECURRING BUSINESS LIABILITIES OR OBLIGATIONS. - THE INDIVIDUAL IS NOT ECONOMICALLY DEPENDENT UPON A PARTICULAR EMPLOYING UNIT WITH RESPECT TO THE SERVICES BEING PERFORMED.

THE CLAIMANT PERFORMED SERVICES FOR THE FIRM AS A RIDESHARE DRIVER.

EFFECT

THE CLAIMANT HAS BASE PERIOD WAGES USABLE TO DETERMINE BENEFIT ENTITLEMENT BASED ON WORK FOR THE EMPLOYER AS SHOWN BELOW.

QTR:	418	\$.00
QTR:	119	\$	3839.92
QTR:	219	\$	3839.92
QTR:	319	\$	3839.92



Deputy ADJUDICATOR 1515	Dated 10/17/20	Decision final unless an appeal is received or postmarked by: 11/02/20
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SS # 888-88-8704

UI LO #: 14
UI Acct. #: 311027

DETERMINATION

ROBERT J MINELLI
2613 E ALLERTON AVE
SAINT FRANCIS WI 53235-5640

RASIER LLC
UBER TECHNOLOGIES
STE 400
1455 MARKET ST
SAN FRANCISCO CA 94103-1355

Issue Week: 12/20	Applicable Wisconsin Law: 108.02(12)(A)&(BM)
Week Ending: 03/21/20	

FINDINGS AND DETERMINATION OF THE DEPUTY:

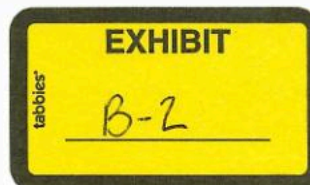
ALL OF THE SERVICES PERFORMED FOR THE EMPLOYER WERE PERFORMED AS AN EMPLOYEE.

THE CLAIMANT WAS AN EMPLOYEE BECAUSE HE WAS NOT FREE OF THE EMPLOYER'S DIRECTION AND CONTROL, AND/OR HAS NOT MET AT LEAST SIX OF THE FOLLOWING CONDITIONS NEEDED TO ESTABLISH THAT HE WAS AN INDEPENDENT CONTRACTOR. - THE INDIVIDUAL ADVERTISES OR OTHERWISE AFFIRMATIVELY HOLDS OUT AS BEING IN BUSINESS. - THE INDIVIDUAL MAINTAINS HIS OWN OFFICE OR PERFORMS MOST OF THE SERVICES IN A FACILITY OR LOCATION CHOSEN BY THE INDIVIDUAL, AND USES HIS OWN EQUIPMENT OR MATERIALS IN PERFORMING THE SERVICES. - THE INDIVIDUAL OPERATES UNDER MULTIPLE CONTRACTS WITH ONE OR MORE EMPLOYING UNITS TO PERFORM SPECIFIC SERVICES. - THE INDIVIDUAL INCURS THE MAIN EXPENSES RELATED TO THE SERVICES THAT HE PERFORMS UNDER CONTRACT. - THE INDIVIDUAL IS OBLIGATED TO REDO UNSATISFACTORY WORK FOR NO ADDITIONAL COMPENSATION OR IS SUBJECT TO A MONETARY PENALTY FOR UNSATISFACTORY WORK. - THE SERVICES PERFORMED BY THE INDIVIDUAL DO NOT DIRECTLY RELATE TO THE EMPLOYING UNIT RETAINING THE SERVICES. - THE INDIVIDUAL MAY REALIZE A PROFIT OR SUFFER A LOSS UNDER CONTRACTS TO PERFORM SUCH SERVICES. - THE INDIVIDUAL HAS RECURRING BUSINESS LIABILITIES OR OBLIGATIONS. - THE INDIVIDUAL IS NOT ECONOMICALLY DEPENDENT UPON A PARTICULAR EMPLOYING UNIT WITH RESPECT TO THE SERVICES BEING PERFORMED.

THE CLAIMANT PERFORMED SERVICES FOR THE FIRM AS A RIDESHARE DRIVER.
EFFECT

THE CLAIMANT HAS BASE PERIOD WAGES USABLE TO DETERMINE BENEFIT ENTITLEMENT BASED ON WORK FOR THE EMPLOYER AS SHOWN BELOW.

QTR: 418	\$	3735.59
QTR: 119	\$	4842.51
QTR: 219	\$	5839.13
QTR: 319	\$	6180.26



Deputy ADJUDICATOR 1515	Dated 10/17/20	Decision final unless an appeal is received or postmarked by: 11/02/20
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