

# Victor Forberger, Esquire

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15 May 2020

Madison Hearing Office  
P.O. Box 7975  
Madison, WI 53707

Sent via facsimile: 608-327-6498 (5 pp.)

RE: Appeal of Initial Determination [redacted]  
On behalf of claimant [redacted] SSN ending in [redacted]

Dear Sir or Madam:

I represent Mr. [redacted] and am appealing the above-referenced initial determination on his behalf.

While Wisconsin unemployment law prevents Mr. [redacted] from collecting unemployment because of his disability and hence receipt of SSDI benefits, the PUA benefits program specifically provides for eligibility for such individuals. UIPL 16-20 at 2 (5 April 2020) (available at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=4628](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628)) describes PUA benefits as:

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

For the purposes of PUA benefits, a covered individual is defined as:

an individual who is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 of the Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and provides self-certification that the individual meets the requirements in Section C.1, below.

\* \* \*

To be a "covered individual" under PUA, an individual must also self-certify that he or she is otherwise able to work and available for work, as provided under state law, except that the individual is unemployed, partially unemployed, unable to work or unavailable for work due to at least one of the following categories described below.

UIPL 16-20 Attachment 1 at I-2 and I-3 (emphasis supplied).

It has come to my attention that the Department has concluded that the state law prohibition on eligibility for SSDI recipients governs their eligibility for PUA benefits because,

according to the Department, there is no explicit provision for SSDI eligibility under the PUA program. Accordingly, the state will not be providing these claimants with any notice or determination regarding their eligibility for PUA benefits, as the state has concluded that the prohibition for regular unemployment governs.

As noted above, federal statutory language and guidance establishes that PUA benefits are available to anyone who is excluded from eligibility for regular unemployment benefits and has loss work because of the pandemic. Furthermore, the Department is obligated to provide these claimants with information concerning their potential eligibility for PUA benefits:

5. Question: Must states review regular UC claims that were denied to assess eligibility for PUA?

Answer: Yes. States are required to review regular UC claims that were denied as of January 27, 2020 forward and identify individuals who are potentially eligible for PUA during the Pandemic Assistance Period. States are thereafter required to provide these individuals with appropriate written notification of their potential eligibility, including filing instructions.

UIPL 16-20 Change 1, Attachment 1 at I-2 (available at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5899](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5899)).

Mr. [redacted] works [redacted]  
[redacted]

As Mr. [redacted] is precluded from receiving regular unemployment benefits under Wisconsin's unemployment law, *see* Wis. Stat. § 108.04(12)(f), and has been unable to return to his concession position because of the pandemic, he is eligible and should receive pandemic unemployment assistance per the statutory text in the federal law and federal guidance for that law.

Per the enclosed information release, please include me in all further correspondence and events in this matter. Given the current pandemic, I have no objections to a phone hearing.

When scheduling the hearing, please note that I am NOT available on the following dates and times:

- May 28th and 29th
- June 1st
- June 11th before 12 noon
- June 18th
- June 25th
- June 29th
- July 2nd

I am also requesting a copy of the determination rationale in this matter. Rather than examining that document at the hearing office as I have traditionally done, I ask that a copy of this document be faxed to me at 608-316-2741.

If you have questions or need additional information, please contact me via the information above. Thank you.

Sincerely,



Victor Forberger  
WI Bar: 1070634

enc    Information release (1 p.)  
Initial determination  (1 p.)