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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0456-21**

L.H.,

Appellant,

v.

BOARD OF REVIEW,
DEPARTMENT OF LABOR,

Respondent.

Argued February 14, 2023 – Decided May 9, 2023

Before Judges Gilson and Rose.

On appeal from the Board of Review, Department of Labor, Docket No. 233403.

Sarah Hymowitz argued the cause for appellant (Legal Services of New Jersey, attorneys; Sarah Hymowitz, on the briefs).

Eric A. Zimmerman, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Eric A. Zimmerman, on the brief).

PER CURIAM

L.H. appeals from an August 19, 2021 final agency decision by the Board of Review (Board), which determined she was ineligible for Pandemic Unemployment Assistance (PUA) benefits and was liable to refund \$6,006 she had received in benefits.¹ Because the Board's decision lacks sufficient analysis to facilitate our review, we vacate it and remand with direction that the Board issue a new decision expressly addressing the criteria for PUA benefits.

I.

Appellant is the primary caretaker of her husband, J.H., who suffers from chronic lung disease and lung nodules. From June 27, 2019, until March 13, 2020, appellant worked as an independent contractor for Quiktrak, Inc., an asset verification company. Her job responsibilities required her to physically inspect businesses, homes, and personal property. She regularly met with people while conducting those inspections.

In March 2020, appellant and J.H. met with J.H.'s doctor via a telehealth visit. The doctor advised them that J.H. might not survive if he contracted COVID-19 and, therefore, they should both limit their exposure to others. Based

¹ This appeal involves references to some of appellant's husband's medical conditions. Accordingly, we use initials to protect the privacy interests of appellant and her husband.

on that advice, appellant left her job. On April 12, 2020, appellant filed a claim for unemployment benefits and PUA benefits, and she received \$6,006 in benefits from that date through October 10, 2020.

On October 15, 2020, the Division of Unemployment Insurance (Division) determined appellant was not eligible for unemployment benefits or PUA benefits. The Division reasoned that appellant had not been advised by a health care provider to quarantine or stop working. Instead, she had voluntarily left her job due to fear of contracting COVID-19. The Division also noted appellant was not unemployed or unable to work due to one of the qualifying reasons identified under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 15 U.S.C. §§ 9001 to 9141. Accordingly, the Division requested a refund of the \$6,006 in benefits appellant had already received.

Appellant administratively appealed. In support of her appeal, she submitted letters from her doctor and her husband's doctor. Those letters explained J.H. suffered from "chronic lung disease and lung nodules," he was at an "increased risk for complications" if he contracted COVID-19, and appellant's job responsibilities "greatly increase[d] her risk" of transmitting COVID-19 to her husband. On January 13, 2021, a telephonic hearing was conducted before the Appeal Tribunal (Tribunal). At the hearing, appellant

testified that she had left her job on the advice of her husband's doctor, who advised that she and her husband should limit their exposure to others. Appellant acknowledged that she was not advised by her own doctor to quarantine prior to leaving her job. Appellant also testified that neither she nor her husband had tested positive for COVID-19.

The Tribunal found appellant was ineligible for unemployment benefits under N.J.S.A. 43:21-5(a) because she had left her job voluntarily without good cause attributable to the work. The Tribunal explained that it was "sympathetic to [appellant's] concerns about her husband's health," but those concerns were "personal" and "unrelated to the work itself." The Tribunal further reasoned that neither appellant nor J.H. had tested positive for COVID-19 prior to appellant leaving her job, and the letters submitted by appellant were "irrelevant" because they concerned only J.H.'s susceptibility to contracting COVID-19.

The Tribunal also found appellant was ineligible for PUA benefits. In making that determination, the Tribunal explained that certain qualified individuals were entitled to PUA benefits under the CARES Act. The Tribunal then listed those qualifications identified in Section 9021(a)(3)(A)(ii)(I) of the CARES Act and concluded, without expressly analyzing any of the qualifications, that appellant was ineligible for PUA benefits. Finally, the

Tribunal found appellant was liable to repay the \$6,006 in benefits she had received.

Appellant appealed the Tribunal's decision to the Board, contending she was entitled to PUA benefits because she had left her job after being advised by a health care provider to quarantine. On August 19, 2021, the Board adopted and modified the Tribunal's decision. Without addressing appellant's contention or providing further analysis, the Board affirmed the Tribunal's determination that appellant was ineligible for PUA benefits. The Board modified the Tribunal's refund determination, however, finding the Division had mistakenly given appellant benefits and, therefore, she was only liable to refund those benefits by having any future unemployment benefits offset by fifty percent.

II.

Appellant now appeals from the Board's decision. She argues that she is entitled to PUA benefits because she was instructed by J.H.'s doctor to quarantine to reduce J.H.'s risk of exposure to COVID-19.

Our scope of review of an agency determination is limited. D.C. v. Div. of Med. Assistance & Health Servs., 464 N.J. Super. 343, 352 (App. Div. 2020). The agency's decision may not be disturbed unless shown to be arbitrary, capricious, or unreasonable, or unsupported by substantial credible evidence in

the record. Sullivan v. Bd. of Rev., Dep't of Lab., 471 N.J. Super. 147, 155-56 (App. Div. 2022). We afford "[w]ide discretion . . . to administrative decisions because of an agency's specialized knowledge." In re Request to Modify Prison Sentences, 242 N.J. 357, 390 (2020).

That discretion, however, "is not unbounded and must be exercised in a manner that will facilitate judicial review." Ibid. (quoting In re Vey, 124 N.J. 534, 543-44 (1991)). Accordingly, an agency's failure to "conduct an independent evaluation of all relevant evidence and legal arguments" regarding agency action "may make the agency's decision arbitrary and capricious and require a remand for reconsideration." Mainland Manor Nursing & Rehab. Ctr. v. N.J. Dep't of Health & Senior Servs., 403 N.J. Super. 562, 571 (App. Div. 2008).

"The CARES Act expanded eligibility, under the PUA program, for payment of benefits for certain categories of individuals." Sullivan, 471 N.J. Super. at 153. Under the CARES Act, the Secretary of Labor "shall provide to any covered individual unemployment benefit assistance while that individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation." 15 U.S.C. § 9021(b). To qualify as a "covered

individual," a claimant must certify that he or she is unemployed, partially unemployed, or unable or unavailable to work due to a qualifying COVID-19-related reason. 15 U.S.C. § 9021(a)(3)(A)(ii). Section 9021(a)(3)(A)(ii)(I) sets forth the list of qualifying reasons, which includes that "the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19." 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(ff).

Appellant contends that she qualified for PUA benefits under Section 9021(a)(3)(A)(ii)(I)(ff) because she left her job on the advice of J.H.'s doctor, who had advised her and J.H. to limit their exposure to others to protect J.H. Based on our review of the record and the Board's decision, it is not clear to us that the Board considered that argument. Indeed, the Board's decision is bereft of any analysis of subsection (ff). Moreover, although the Board noted it had reviewed the findings and determinations of the Tribunal in coming to its decision, the Tribunal's decision did not expressly address subsection (ff).

We find this lack of analysis hampers our review. "Appellate courts 'cannot exercise their duty of review unless they are advised of the considerations underlying' the administrative determination." In re Application of Holy Name Hosp., 301 N.J. Super. 282, 292 (App. Div. 1997) (quoting In re

Plainfield-Union Water Co., 11 N.J. 382, 396 (1953)). Accordingly, a remand is necessary so that the Board can conduct "a full analysis" of whether appellant qualified for PUA benefits under Section 9021(a)(3)(A)(ii)(I) and render "a complete explanation of [its] decision." In re Virtua-West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 436 (2008); see also Bustard v. Bd. of Rev., 401 N.J. Super. 383, 385 (App. Div. 2008) (remanding to the Board for further consideration where "the Board inadequately considered a focal issue in the matter").

In that regard, we note that appellant's testimony seems to support a finding of eligibility under subsection (ff). What we do not have is any analysis from the Board explaining why she did not qualify. Moreover, we do not have any explanation from the Board on how it has applied subsection (ff) to other applicants. We therefore vacate the Board's August 19, 2021 decision and remand with direction that the Board is to analyze whether appellant qualified for PUA benefits under Section 9021(a)(3)(A)(ii)(I) and issue a new decision expressly including its analysis of subsection (ff). If the Board finds that appellant did not qualify for PUA benefits, appellant will have the right, if she chooses, to file an appeal from the Board's new decision.

Vacated and remanded. We do not retain jurisdiction.