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STATE OF MICHIGAN
COURT OF APPEALS

AMANDA A. HOLBROOK,
Claimant-Appellee,

FOR PUBLICATION
February 1, 2024
9:00 a.m.

v

DEPARTMENT OF LABOR AND ECONOMIC
OPPORTUNITY/UNEMPLOYMENT
INSURANCE AGENCY,

No. 361919
Jackson Circuit Court
LC No. 21-003433-AE

Appellant,

and

DEPARTMENT OF LABOR AND ECONOMIC
OPPORTUNITY/UNEMPLOYMENT
INSURANCE AGENCY,

Plaintiff-Appellant,

v

ASHLEIGH BAKER,

No. 362201
Clinton Circuit Court
LC No. 21-012118-AE

Defendant-Appellee.

Before: BOONSTRA, P.J., and O’BRIEN and SWARTZLE, JJ.

SWARTZLE, J.

Many people across the nation were unable to work as a result of COVID-19 pandemic restrictions. In response, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 15 USC § 9001 *et seq*, to help unemployed individuals become eligible for unemployment benefits in their respective states. Both of the claimants in these consolidated appeals qualified for such benefits because they were the primary caretakers for their children,

their children could not attend school in-person due to government-imposed lockdowns, and the claimants otherwise met the qualifications of a “covered individual” under the act. Accordingly, we affirm the circuit courts’ decisions approving their benefits.

I. BACKGROUND

The Michigan Unemployment Insurance Agency oversees claims for unemployment benefits in Michigan, and it is managed by the Department of Labor and Economic Opportunity. Amanda Holbrook and Ashleigh Baker both independently applied for unemployment benefits within the dates designated by the CARES Act for pandemic-unemployment assistance. The Agency either denied or later rescinded benefits to each of them as described below.

A. HOLBROOK

The Agency denied Holbrook unemployment benefits because it determined that she had not established that she was employed in 2019 or 2020. Holbrook appealed the Agency’s decision, and an Administrative Law Judge conducted an evidentiary hearing concerning the Agency’s denial. No one appeared on behalf of the Agency during the hearing, at which Holbrook provided her tax documents to establish the wages that she earned in 2019. Holbrook also provided unrebutted testimony that she was the primary caretaker for her daughter who was required to stay home from school as a result of Governor Whitmer’s Executive Order No. 2020-05 and subsequent extensions.

The ALJ found that Holbrook had earned wages in 2019 and that she was a “covered individual” under the CARES Act because she was able and available to work but-for the government’s COVID-19 lockdowns. Consequently, the ALJ reversed the Agency’s decision and ordered that Holbrook was entitled to a weekly unemployment benefit.

The Unemployment Insurance Appeals Commission later upheld the ALJ’s decision, and the Agency appealed that decision to the Jackson Circuit Court. During the circuit-court proceedings, and for the first time, the Agency argued that Holbrook had quit her job in 2019 because she was pregnant and, thus, she was not eligible for unemployment benefits because she did not lose her job “due to” the COVID-19 pandemic. After a hearing, the Jackson Circuit Court upheld the Commission’s ruling because it was not contrary to law and was supported by competent, material, and substantial evidence on the record.

B. BAKER

Similar to Holbrook, the Agency initially denied Baker’s application for unemployment benefits because it determined that she had not demonstrated that she was employed in 2019 or 2020. The Agency redetermined that Baker was eligible for benefits, however, when she submitted information substantiating her employment in 2019. But then, the Agency later rescinded those benefits because it believed that Baker’s employment was not located in Michigan.

Baker appealed the Agency’s rescission. The ALJ assigned to Baker’s case explained on the record that no documents had been presented to him during the appeal, and no one from the Agency attended the evidentiary hearing for Baker’s appeal. Thus, the ALJ determined that the decision would be based on Baker’s sworn testimony. Baker testified that she had been employed

in Eagle, Michigan, before her employment ended in 2019. Further, she stated that she was diagnosed with cancer after her employment ended, and she was unable to work during the COVID-19 pandemic because she was taking care of her children who were required to be home for remote-schooling as a result of the government lockdowns. When asked about her current employment status, Baker testified that she regained employment on June 9, 2021.

The ALJ found that Baker's testimony was credible, and he held that Baker was eligible to receive unemployment benefits. The Agency appealed this decision to the Commission, which affirmed the ALJ's decision. The Agency then appealed that decision to the Clinton Circuit Court, and the Agency argued, for the first time, that Baker was not eligible for benefits under pandemic-unemployment assistance because there was no indication that her unemployment was caused by the COVID-19 pandemic. The Agency made no argument concerning Baker's cancer diagnosis.

The Clinton Circuit Court held a hearing concerning the parties' arguments, and again the Agency did not present any argument concerning Baker's cancer diagnosis. The Clinton Circuit Court upheld the Commission's decision because the ALJ's decision was supported by competent, material, and substantial evidence.

C. CONSOLIDATION

The Agency now appeals both circuit courts' decisions regarding Holbrook and Baker on leave granted. See *Holbrook v Dep't of Labor and Economic Opportunity*, unpublished per curiam order of the Court of Appeals, issued December 12, 2022 (Docket No. 361919); and *Unemployment Ins Agency v Ashleigh Baker*, unpublished per curiam order of the Court of Appeals, issued March 1, 2023 (Docket No. 362201). These appeals were consolidated by this Court. *Unemployment Ins Agency v Ashleigh Baker*, unpublished per curiam order of the Court of Appeals, issued March 1, 2023 (Docket Nos. 361919 and 362201).

II. ANALYSIS

The Michigan Constitution requires a circuit court to review an agency decision as follows:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law. [Const 1963, art 6, § 28.]

“A reviewing court is not at liberty to substitute its own judgment for a decision of the [Commission] that is supported with substantial evidence.” *Hodge v US Security Assoc, Inc*, 497 Mich 189, 193-194; 859 NW2d 683 (2015).

Thus, this Court has explained that it “reviews a lower court's review of an administrative decision to determine whether the lower court applied correct legal principles and whether it

misapprehended or misapplied the substantial evidence test to the agency’s factual findings, which is essentially a clear-error standard of review.” *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 431; 906 NW2d 482 (2017) (cleaned up). “A finding is clearly erroneous where, after reviewing the record, this Court is left with the definite and firm conviction that a mistake has been made.” *Id.* at 431-432.

With respect to statutory interpretation, this Court reviews such matters de novo. *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 207; 732 NW2d 514 (2007). “When interpreting a statute, we must ascertain the Legislature’s intent,” which is accomplished “by giving the words selected by the Legislature their plain and ordinary meanings, and by enforcing the statute as written.” *Griffin v Griffin*, 323 Mich App 110, 120; 916 NW2d 292 (2018) (cleaned up). If a statute is unambiguous, it must be applied as written. *McQueer v Perfect Fence Co*, 502 Mich 276, 286; 971 NW2d 584 (2018).

A. CARES-ACT ELIGIBILITY

In response to the COVID-19 pandemic, the federal government provided states with funds to grant unemployment benefits to eligible persons. To be eligible under the CARES Act, a person must be a “covered individual” under 15 USC 9021(a)(3)(A). This section states in relevant part:

(3) Covered individual. The term “covered individual”—

(A) means an individual who—

- (i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, 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 9025 of this title;
- (ii) provides self-certification that the individual—
 - (I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

* * *

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work; [15 USC 9021(a)(3)(A).]

Both Holbrook and Baker applied for unemployment benefits because they were the primary caretakers for their children, and they were required to stay home to care for their children after the children's schools were either shut down or moved to remote-learning under Governor Whitmer's Executive Order No. 2020-5. The end date for the Executive Order was extended several times, and claimants' public schools remained physically closed throughout the relevant time period.

Before the circuit courts and in its briefs on appeal, the Agency contends that neither Holbrook nor Baker qualified for pandemic-unemployment assistance under the CARES Act because neither was unemployed due to the COVID-19 pandemic. In the Agency's view, a claimant for unemployment benefits could not be unemployed because of COVID-19 if the claimant became unemployed before the start of the COVID-19 pandemic. In support, the Agency points to 15 USC 9021(c), the federal provision governing the time-period that the CARES Act covered unemployment benefits. This section states in relevant part:

(c) Applicability

(1) In general. Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual—

(A) for weeks of unemployment, partial unemployment, or inability to work *caused by* COVID-19—

(i) beginning on or after January 27, 2020; and

(ii) ending on or before September 6, 2021; and

(B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work *caused by* COVID-19 continues. [15 USC 9021(c) (emphasis added).]

The Agency argues that this provision narrows the scope of "covered individuals" to those individuals who lost their employment on or after January 27, 2020. This argument is, however, misplaced for several reasons.

First, the primary focus of 15 USC 9021(c)(1) centers on defining the time period for which the special pandemic-related benefits were available. The operative language of the subsection is "beginning on or after January 27, 2020" and "ending on or before September 6, 2021," meaning that benefits under the CARES Act were not available for unemployment prior to January 27, 2020, or after September 6, 2021. While the provision does refer to "covered individual" and "unemployment . . . caused by COVID-19," it does so within the context of setting forth the applicable time period for which benefits were available. Thus, for example, even if a person remained unemployed after September 6, 2021, and would otherwise meet the definition of a "covered individual," the person would not be eligible for benefits under the CARES Act. This loss of benefits would be because of the lapsed time period, not because the person somehow otherwise failed to be a "covered individual" or the person's unemployment was no longer "caused" somehow by COVID-19.

Second, the broader context of the CARES Act further undermines the Agency’s argument. Congress set forth clear, express conditions in 15 USC 9021(a)(3)(A) that a person must meet to be a “covered individual.” All of these conditions are directly or indirectly related to specific conditions of life that would have come about *because of* the COVID-19 pandemic, our governments’ reactions to the pandemic, and the resulting economic conditions. Had Congress intended to impose another, “*because of*” condition to the benefits, the logical place to have put that condition would have been in 15 USC 9021(a)(3)(A), rather than a separate subsection dealing with the applicable time period. If a claimant satisfies the definition of a “covered individual” and is not ineligible for some unrelated reason, then the claimant is eligible for CARES Act benefits during the defined time period.

Third and finally, the judicial decision from New York that the Agency cites in support of its position is, at best, inapposite to that position, and, at worst, actually undermines it. In *Mangiero v Comm’r of Labor*, 197 AD3d 1458; 153 NYS3d 696 (NY S Ct, 2021), a claimant for pandemic-unemployment assistance was denied benefits by the New York Commissioner of Labor. *Id.* at 1459. The claimant argued that she was eligible for assistance because she was “unable to reach [her] place of employment because [she was] advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.” *Id.* The claimant was not working at the time, however, and the New York court found that she could not be unable to reach her place of employment when she did not have employment in the first place. *Id.* As the New York court put it, a claimant “must have an attachment to the labor market and must have experienced a loss of wages and hours or [be] unable to start employment following a bona fide job offer.” *Id.*

The Agency argues that, under the logic of *Mangiero*, Holbrook and Baker were ineligible for pandemic-unemployment assistance because they did not have an attachment to the labor market at the beginning of the COVID-19 pandemic. But, the claimant in *Mangiero* sought to qualify as a “covered individual” under a different provision of the definition than the claimants do here. Specifically, the claimant in *Mangiero* argued that she was a covered individual under 15 USC 9021(a)(3)(A)(ii)(I)(ff), which states, “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.” Under this provision, the claimant would have *first* needed to have a “place of employment,” and *then* to have a health-care provider order the claimant to self-quarantine and thereby not be able to reach her workplace. Read in context, this is the kind of “attachment to the labor market” that the New York court appears to believe was needed to qualify as a “covered individual” under subsection (ff).

Neither Holbrook nor Baker sought to qualify as a “covered individual” under subsection (ff), so *Mangiero* is inapposite in that regard. Worse for the Agency, however, the *Mangiero* case actually illustrates that Congress knew full well how to condition eligibility on the existence of a current or recent job (i.e., a concrete “attachment to the labor market”). The fact that it included such a condition in subsection (ff) but omitted anything similar in subsection (dd) further undermines the Agency’s reading of the CARES Act. See *Michigan Ambulatory Surgical Ctr v Farm Bureau General Ins Co of Michigan*, 334 Mich App 622, 632; 965 NW2d 650 (2020).

In contradistinction, Holbrook and Baker both sought qualification as covered individuals under subsection (dd), the “caregiving” provision, which does not require a claimant to have had a place of employment to which that claimant could not travel. In Holbrook’s case, Holbrook

testified that her daughter attended school before the COVID-19 pandemic that allowed her to work. Further, once her daughter was required to attend school remotely, she was unable to work because she needed to stay home with her daughter. Similarly, in Baker’s case, Baker testified that she was taking care of her children during the COVID-19 pandemic, and she specifically testified that she was unable to work while her children were attending school remotely from her home. This and other record evidence developed during the administrative proceedings constituted competent, material, and substantial record evidence to support the claimants’ claims.

B. RAISE OR WAIVE

As a final coda, during oral argument before this Court, the Agency raised—for the first time—the fact-intensive argument that neither Holbrook nor Baker actually demonstrated that she was “otherwise able to work and available to work.” Specifically, the Agency argued during oral argument that Holbrook had not shown that she was able or available to work because she quit her job due to her high-risk pregnancy, and Baker had not shown that she was able or available to work because she was diagnosed with cancer after her employment was terminated. At first blush, the Agency’s position seems quite extraordinary, as there has been no showing in either record that a claimant is not able or available to work merely by dint of a prior high-risk pregnancy or a cancer diagnosis.

With that said, we need not reach the matter. The Agency did not challenge the claimants’ benefits on this ground during the administrative proceedings, before the circuit courts, or in its briefs on appeal. Thus, the matter has been waived. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 359090); slip op. at 3. Because none of the exceptions to our “raise or waive” rule apply here, we will not consider the Agency’s unpreserved argument any further. *Booth v Univ of Michigan Bd of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993).

III. CONCLUSION

In each of the two administrative proceedings, the ALJ made findings that were supported by competent, material, and substantial evidence on the record for the issues that were presented to them, and neither decision was contrary to law. Consequently, this Court is not left with a definite and firm conviction that either circuit court made a mistake in upholding the Commission’s decisions.

Affirmed.

/s/ Brock A. Swartzle
/s/ Mark T. Boonstra
/s/ Colleen A. O’Brien