

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BRANDON BEATY,

and

JEREMIAH CHRISTIAN STARK,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendants.

Case No. 21-2195 C**Class Action Complaint Seeking Money Damages from Defendant United States Under the Tucker Act, 28 U.S.C. § 1491, and CARES Act, 15 U.S.C. § 9021, for Failure to Provide Pandemic Unemployment Assistance Payments****INTRODUCTION**

1. In the wake of the unprecedented public health emergency and economic crisis caused by COVID-19, the United States Congress sought to ensure that workers affected by the pandemic would receive federal financial support. It initially did so through the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) enacted on March 27, 2020.

2. In the Act, Congress provided for “pandemic unemployment assistance” or PUA for individuals who were not covered by preexisting unemployment compensation programs or who had exhausted the benefits available under such programs. *See* 15 U.S.C. § 9021(a)(3). The Act mandates that the Secretary of Labor “shall provide” PUA payments to covered individuals. *See* 15 U.S.C. § 9021(b).

3. The Act further directs the Secretary to provide such benefits “through agreements with States” that “have an adequate system for administering such assistance.” *See*

15 U.S.C. § 9021(f)(1). However, the federal government was responsible for 100% of the cost of the program, including both benefit payments and administrative expenses, *see* 15 U.S.C. § 9021(f)(2), and nothing in the CARES Act or its amendments limited PUA benefits to residents of states that the Secretary determined to have an “adequate system” for administering benefits.

4. The PUA program was originally slated to end on December 30, 2020, but was extended by Congress through September 6, 2021. *See* 15 U.S.C. § 9021(c)(1)(A).

5. In describing the Secretary of Labor’s obligation to provide PUA payments, the language of the CARES Act is clear and mandatory. It does not grant discretion to the Secretary or states to deny PUA payments guaranteed by the Act to qualified individuals.

6. Nevertheless, between approximately June 12 and July 3, 2021, prior to the end date of the PUA program, recipients in 20 states had their benefits terminated prematurely when those states chose to stop administering the program. The full list of states is set forth in paragraph 44.

7. The United States did nothing to ensure that the affected recipients would receive payments after these states stopped administering the program. Through this failure, the United States disregarded the mandate of the Act that the “Secretary *shall provide* to any covered individual unemployment benefit assistance” while such individual was eligible and the PUA benefit entitlement remained in effect. 15 U.S.C. § 9021(b) (emphasis added). The Act did not make this mandate contingent on state administration.

8. Plaintiffs Jeremiah Christian Stark and Brandon Beaty were two of the individuals affected by this unlawful discontinuation of benefits. They were found eligible for PUA benefits by their states, Arkansas and South Carolina, and were receiving benefits as of June 2021, when

those states decided to stop administrating the program. Thereafter, the United States failed to pay benefits to Stark and Beaty as required by the CARES Act.

9. Like Stark and Beaty, many other individuals were denied benefits for which they remained eligible in accordance with the CARES Act, due to the failure of the United States to continue paying those benefits after states chose to stop administering the PUA program prior to September 6, 2021.

10. Plaintiffs bring this civil action against the United States on behalf of themselves and a class of similarly situated individuals to recover damages from the United States for its failure to comply with the CARES Act and the resulting loss of money to Plaintiffs and all members of the class.

PARTIES

11. Plaintiff Brandon Beaty is a resident of South Carolina. Beaty was found eligible for PUA benefits by South Carolina in July 2020, and she was awarded benefits of approximately \$431 per week. Beaty was self-employed as a cake baker and marketer. The COVID-19 pandemic caused a significant loss of work for Beaty because, among other things, public health quarantine and isolation guidance caused customers to avoid holding parties and therefore reduced the need for cakes. Beaty remained eligible for benefits through September 6, 2021, but she received no benefits after June 30, 2021, when South Carolina purported to terminate its administration of the PUA program.

12. Plaintiff Jeremiah Christian Stark is a resident of Arkansas. Stark was found eligible for PUA benefits by Arkansas in May 2020, and he was awarded benefits of approximately \$432 per week. Stark was self-employed as a handyman. The COVID-19

pandemic caused a significant loss of work for Stark because, among other things, public health quarantine and isolation guidance caused potential customers to be reluctant to have contractors in their homes. Stark remained eligible for benefits through September 6, 2021, but he received no benefits after June 26, 2021, when Arkansas purported to terminate its administration of the program.

13. Defendant United States was required under the CARES Act, as discussed further below, to provide for payments to eligible recipients of pandemic unemployment assistance (PUA). The obligation was to be carried out by the Secretary of the Department of Labor (DOL), an agency in the Executive Branch of the United States whose purpose is to “to foster, promote and develop the welfare of the wage earners of the United States.” 29 U.S.C. § 551.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this civil action under the Tucker Act, 28 U.S.C. § 1491. This Court is the proper venue for actions under the Tucker Act.

15. The relevant provisions of the CARES Act, codified at 15 U.S.C § 9021, are money-mandating under applicable law.

STATUTORY BACKGROUND

16. On March 27, 2020, shortly after it was passed unanimously by the Senate, the Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law by then President Donald Trump. Among other things, the Act sought to stabilize the economy in the wake of the public health emergency caused by COVID-19. To do so, the Act provided financial support and assistance to individuals suffering from the economic effects of the pandemic.

17. Title II of the Act was entitled the Relief for Workers Affected by Coronavirus Act. It provided financial enhancements and support for several existing state and federal unemployment compensation laws and programs.

18. In addition to bolstering existing unemployment compensation programs, the Act created a new program called Pandemic Unemployment Assistance (PUA), through provisions now codified at 15 U.S.C. § 9021, *et seq.* The PUA program aimed to provide benefits to individuals who were not covered by preexisting unemployment compensation programs, but who were unable to work due to COVID-19.

19. In Section 2102(b) of the Act (now codified at 15 U.S.C. § 9021(b)), Congress directed the Secretary of Labor to provide payments under the new PUA program to eligible recipients. Specifically, that section read as follows:

ASSISTANCE FOR UNEMPLOYMENT AS A RESULT OF COVID-19. Subject to subsection (c), the Secretary [of Labor] shall provide to any covered individual unemployment benefit assistance while such 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 (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

20. In Section 2102(c) of the Act (now codified at 15 U.S.C. § 9021(c)), Congress established the time period in which PUA benefits would be available. The end date was originally set to December 31, 2020. Section 2102(c) also established other provisions regarding timing, procedure, and duration of benefits including setting a maximum of 79 weeks of assistance for any covered individual inclusive of any period in which the individual received regular or extended unemployment benefits under a non-PUA program.

21. The end date of December 31, 2020, was later extended by two acts of Congress to September 6, 2021. *See* P.L. 116-260 and P.L. 117-2.

22. Congress defined a “covered individual” for purposes of the PUA program in Section 2102(a)(3) of the Act (codified at 15 U.S.C. § 9021(a)(3)). In short, a “covered individual” was an individual who was not eligible for regular unemployment benefits (such as many independent contractors and self-employed persons), but who was nevertheless unable to work because of COVID-19. The specific statutory definition was as follows:

- (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—
 - (aa) the individual has been diagnosed with COVID–19 or is experiencing symptoms of COVID–19 and seeking a medical diagnosis;
 - (bb) a member of the individual’s household has been diagnosed with COVID–19;
 - (cc) the individual is providing care for a family member or a member of the individual’s household who has been diagnosed with COVID–19;
 - (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;
 - (ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID–19 public health emergency;

- (ff) 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;
 - (gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID–19 public health emergency;
 - (hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct 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 Secretary [of Labor] for unemployment assistance under this section; or
 - (II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, and meets the requirements of subclause (I); and
 - (iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; and
- (B) does not include—
- (i) an individual who has the ability to telework with pay; or
 - (ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

15 U.S.C. § 9021(a)(3).

23. Pursuant to its authority under Section 2102(a)(3)(A)(ii)(I)(kk), the Secretary of Labor issued guidance regarding eligibility for PUA benefits. Among other things, the Secretary announced that PUA benefits were available to an “independent contractor who experiences a significant diminution of work as a result of COVID-19.”

24. Congress directed that the Secretary of Labor should provide for PUA payments by entering into agreements with States which the Secretary determined to have an “adequate system for administering such assistance.” Specifically, Section 2102(f) of the Act (codified at 15 U.S.C. § 9021(f)), read as follows:

The Secretary shall provide the assistance authorized under subsection (b) through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies, including procedures for identity verification or validation and for timely payment, to the extent reasonable and practicable.

25. Though administered by States that had adequate systems for doing so, PUA benefits and their administration by States were solely funded by the federal government. Specifically, the Act provided for the federal government to pay “100 percent” of both the benefits provided to recipients and the administrative expenses incurred by States in paying the PUA benefits. *See* 15 U.S.C. § 9021(f)(2).

26. In sum, through these provisions of the CARES Act, Congress created a new unemployment benefit for individuals affected by COVID-19 who were not covered by existing unemployment compensation programs, such as many independent contractors, “gig workers,” self-employed individuals, church employees, student workers, and others. Congress directed the Department of Labor to provide payments to eligible recipients and instructed the Department to do so by entering into agreements with states, to the extent those states had an adequate system

for administering benefits. And Congress established that the PUA benefit would be available to eligible persons through September 6, 2021.

27. Importantly, nothing in the statute granted authority or discretion to the Secretary of Labor to cease providing for PUA benefits prior to the end date established in the legislation. Rather, the Act stated that the Secretary of Labor “shall provide” the payments. 15 U.S.C. § 9021(b). Similarly, nothing in the statute granted power or discretion to a participating State to terminate the program prematurely.

28. The Department of Labor itself recognized the non-discretionary nature of the program. On June 5, 2020, the Department’s Solicitor Kate O’Sconnlain and Assistant Secretary Pallasch wrote to its Inspector General Scott Dahl: “The Secretary of Labor (Secretary) must provide PUA benefits to an individual who is determined to be eligible . . . The relevant language is not discretionary.”

29. Indeed, Congress’s intent to create a non-discretionary entitlement to PUA benefits is reflected in the difference between the language it used in establishing the PUA program and the language it used elsewhere in the CARES Act in providing support for preexisting unemployment compensation programs. Specifically, in those other sections, Congress provided that participating states could “terminate . . . agreement[s]” with the Secretary of Labor in relation to unemployment benefits by “providing 30 days’ written notice.” *See* 15 U.S.C. § 9023(a); 15 U.S.C. § 9024(a); 15 U.S.C. § 9025(a).

30. In contrast, Congress included no early termination language in the PUA provisions. By deciding not to do so, Congress made clear that it did not contemplate “terminat[ion]” of agreements to provide PUA benefits prior to the end date for such benefits established in the statute.

31. Further, States were not automatically entitled to participate in the administration of PUA merely through filing an application with the Secretary, as was the case with other unemployment benefit programs under the CARES Act. Instead, in 2102(f)(1), the Act required the Secretary of Labor to enter into such agreements only if the Secretary determined that the State had “an adequate system for administering such assistance through existing State agencies.”

32. Through this provision, Congress made clear that the Secretary of Labor had the obligation to guarantee the payment of PUA benefits, including by vetting states that would be making PUA payments on behalf of the United States and ensuring that they could do so effectively.

33. Although the Act stated that the United States should administer the program through states to the extent the Secretary determined that such states had adequate systems for doing so, the Act’s mandate that the United States pay benefits is not contingent on state administration. Rather, in the absence of an adequate state system, the United States was nevertheless required to pay benefits, such as by paying those benefits directly or arranging for one participating state to administer benefits for residents in other states.

FACTUAL ALLEGATIONS

34. Shortly after the enactment of the CARES Act, the Department of Labor entered into agreements with states, including Arkansas and South Carolina, for them to distribute PUA benefits to eligible residents of those states. As provided for in the statute, the costs of PUA benefits and of PUA’s administration by the states were fully funded by the United States.

35. Pursuant to the agreements, Arkansas, South Carolina, and other states began making payments of PUA benefits to their eligible residents as the agent of DOL.

36. However, contrary to the text of the Act—which excluded early termination provisions from the sections addressing PUA benefits, as discussed above—the Department included early termination provisions in its agreements with States regarding PUA benefits.

37. On April 5, 2020, the Department’s Employment and Training Administration—Advisory System, issued an “Advisory: Unemployment Insurance Program Letter No. 16-20 (Letter 16-20) addressed to “STATE WORKFORCE AGENCIES.” The title of the letter was “Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020–Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions.” Among the instructions contained in Letter No. 16-20 appeared the following:

5. Termination of PUA Agreement. Either party, upon thirty days written notice, may terminate the PUA Agreement. The Department reserves the right to terminate this Agreement if it determines that the State does not have an adequate system for administering such assistance, including because the State is not adequately ensuring that individuals receiving benefits under the PUA Program are eligible for such benefits. In the case of termination, the PUA period will end 30 days after the date one of the parties to the agreement notifies the other party of its election to terminate the PUA agreement. No PUA payments may be made with respect to weeks which begin after the date the termination of the agreement is effective. However, PUA is payable for weeks of unemployment ending on or before such termination date.

38. To the extent the letter implied that the Department of Labor would not continue to provide PUA benefits in the event that states decided to terminate their agreement with the Department, the letter was contrary to the CARES Act’s provisions since Congress made the payment of benefits mandatory and chose not to give States the right to terminate their PUA agreements with the Secretary. Further, Congress did not grant the Department of Labor the

authority to delegate to any state the discretion to decide to deprive eligible recipients of PUA benefits prior to the statutory end date.

39. On May 6, 2021, South Carolina Governor Henry McMaster sent a letter in which he “direct[ed] the Department of Employment and Workforce (DEW) to terminate the State of South Carolina’s participation in the . . . Pandemic Unemployment Assistance (PUA) program . . . effective June 30, 2021.” As justification for this action, Governor McMaster asserted that PUA and other pandemic unemployment programs were “dangerous federal entitlement[s]” that were “incentivizing and paying workers to stay at home rather than encouraging them to return to the workplace.”

40. As discussed above, Plaintiff Beaty was found eligible for PUA benefits by South Carolina in June 2020 and remained eligible through September 6, 2021. However, after Governor McMaster purported to terminate the state’s administration of the program on June 30, 2021, Beaty received no benefits from South Carolina or the United States.

41. On May 7, 2021, Arkansas Governor Asa Hutchinson sent a letter to the state’s Division of Workforce Services (DWS) in which Hutchinson “direct[ed] DWS to terminate the State of Arkansas’s participation in . . . the Pandemic Unemployment Assistance (PUA) program . . . effective June 26, 2021.” As justification for this action, Hutchinson asserted that pandemic unemployment compensation was “not necessary and actually interferes with the ability of employers to fill over 40,000 job vacancies in Arkansas.”

42. As discussed above, Plaintiff Stark was found eligible for PUA benefits by Arkansas in May 2020 remained eligible through September 6, 2021. However, after Governor Hutchinson purported to terminate the state’s administration of the program on June 30, 2021, Beaty received no benefits from Arkansas or the United States.

43. After South Carolina and Arkansas notified the Secretary of Labor of their withdrawal from the administration of PUA benefits, Defendant United States failed to provide Beaty, Stark, and other eligible recipients in those states with the mandated PUA unemployment compensation benefits they remained entitled to receive pursuant to the CARES Act, and its amendments.

44. Likewise, the United States failed to provide benefits to residents of other states that prematurely stopped administering the PUA program. The full list of the 20 terminating states is as follows: Alabama (terminated on June 19, 2021), Arkansas (July 26, 2021), Georgia (June 27, 2021), Idaho (June 19, 2021), Iowa (June 12, 2021), Louisiana (July 31, 2021), Mississippi (June 12, 2021), Missouri (June 12, 2021), Montana (June 27, 2021), Nebraska (June 19, 2021), New Hampshire (June 19, 2021), North Dakota (June 19, 2021), Oklahoma (June 26, 2021), South Carolina (on June 30, 2021), South Dakota (June 26, 2021), Tennessee (July 3, 2021), Texas (June 26, 2021), Utah (June 26, 2021), West Virginia (June 19, 2021) and Wyoming (June 19, 2021).

45. Through this failure, the United States violated the command of the Act that it “shall provide” PUA benefits to eligible recipients. 15 U.S.C. § 9021(b).

CLASS ALLEGATIONS

46. Plaintiffs’ claims are susceptible to class certification under Rule 23 of the Rules of the Court of Federal Claims (RCFC).

47. The Class is defined as:

All individuals who reside in the states of Alabama, Arkansas, Georgia, Idaho, Iowa, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas Utah,

West Virginia and Wyoming (“Terminating States”) who were determined to be eligible to receive Pandemic Unemployment Assistance (“PUA”) benefits pursuant to the eligibility criteria in the CARES Act and its amendments by each class member’s respective state agency up to and including the date the class member’s state ceased its administration of the PUA program, and who remained eligible for benefits under the CARES Act and its amendments for some period after their respective states’ termination dates.

48. Certification of the class under Rule 23 is warranted because:
- a. The class is so numerous that joinder of all members is impracticable. On information, there are hundreds of thousands of individuals who meet the proposed class definition.
 - b. One or more questions of law or fact are common to the class, including:
 - (i) Whether the CARES Act is money-mandating.
 - (ii) Whether the CARES Act required the Secretary of Labor to provide PUA payments to eligible recipients notwithstanding the decision of a recipient’s home state to stop administering the program.
 - c. The claims of the Plaintiffs are typical of the claims of the members of the class in that, like each of the Plaintiffs, the members of the class were determined to be eligible to receive PUA benefits by the respective state agency up to the date each respective Relevant State terminated its participation in the PUA program and would have continued to receive benefits if not for the failure of the United States to pay benefits after states prematurely stopped administering the program.
 - d. Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs’ Counsel are competent and experienced in litigating Tucker Act claims and class actions.

- e. The United States refused to act on grounds generally applicable to the class.

Specifically, the United States took the position that it had no obligation to pay benefits to residents of a state that had decided to stop administering the program.

- f. Issues common to the class predominate over issues unique to individual class members, and pursuit of the claims as a class action is superior to other available methods for the fair and efficient resolution of this controversy.

**COUNT: CLAIM UNDER THE TUCKER ACT AND CARES ACT FOR
FAILURE TO PAY PUA BENEFITS TO STARK, BEATY, AND THE PUTATIVE
CLASS**

- 49. Plaintiffs reallege and incorporate herein the paragraphs set forth above.

50. As set forth above, Stark remained eligible for PUA benefits through September 6, 2021, but received no benefits after June 26, 2021.

51. As set forth above, Beaty remained eligible for PUA benefits through September 6, 2021, but received no benefits after June 30, 2021.

52. The other members of the proposed class remained eligible for PUA benefits after their states terminated administration of the PUA program, but received no benefits after that date.

53. By failing to ensure PUA payments to Stark, Beaty, and other members of the proposed class, the United States violated the mandate in the CARES Act that it “shall provide” benefits to eligible recipients.

54. The Tucker Act creates a cause of action, and waives sovereign immunity over such an action, when a statute can “fairly be interpreted as mandating compensation by the Federal Government,” subject to certain exceptions. *Maine Community Health Options v. Moda Health Plan*, 140 S. Ct. 1308, 1329 (2020).

55. Here, the CARES Act can be fairly interpreted as mandating compensation by the Federal Government to the Plaintiffs because the Act states that the Department of Labor “shall provide” PUA benefits to eligible recipients. 15 U.S.C. § 9021(b). *See Maine Community*, 140 S. Ct. at 1329 (finding that a statute created a cause of action when it stated that the federal government “shall provide” for payments and “shall pay”). No exception applies that would deprive Plaintiffs of a cause of action or recovery here. Consequently, under the Tucker Act and CARES Act, Plaintiffs have stated a cause of action for the wrongful denial of PUA benefits.

56. Plaintiffs thus allege that they, and the other members of the proposed class, are entitled to recover damages in the amount of the PUA unemployment benefits they were entitled to but did not receive from Defendant United States after the date their respective states ceased administering the program.

WHEREFORE,

- A. Plaintiffs seek an order allowing this case to proceed as a class action under RCFC 23;
- B. Plaintiffs seek a judgment in favor of Plaintiffs and the proposed class, and against the United States, for damages in the amount of PUA benefits each Plaintiff and each Class Member should have received from the date their home states ceased administering the PUA benefit program up through the earlier of the date the PUA program ended pursuant to the terms of the CARES Act and its amendments or the date on which each Plaintiff and each Class Member ceased being eligible for such benefits.
- C. Plaintiffs seek attorneys’ fees, expenses and costs under the Equal Access to Justice Act, 28 U.S.C § 2412, and otherwise;
- D. Plaintiffs seek such other relief as the Court deems just and proper.

Respectfully submitted,

/s/Daniel M. Rosenthal

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