

STATE OF FLORIDA
REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

In the matter of:

Claimant/Appellant

R.A.A.C. Docket No. 21-00232

vs.

Referee Decision No. 0062221043-03

Employer/Appellee

ORDER OF REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

This case comes before the Commission for consideration of an appeal of the decision of a reemployment assistance appeals referee holding the claimant entitled to the minimum weekly benefit amount of Pandemic Unemployment Assistance (“PUA”) under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”), created by Public Law 116-136 (Mar. 27, 2020), as amended by the Continued Assistance for Unemployed Workers Act of 2020 (Dec. 27, 2020), codified at 15 U.S.C. Chapter 116. Florida law governs the appeals process for PUA. 15 U.S.C. §9021(c)(5)(B). The Commission has jurisdiction pursuant to Section 443.151(4)(c), Florida Statutes.

The referee’s decision advised that a request for review should specify any and all contentions of error with respect to the referee’s decision, and that contentions of error not specifically raised in the request for review may be considered waived. The Commission’s appellate review is limited to the issues before the referee and the evidence and other pertinent information contained in the official record. The referee has the responsibility to develop the hearing record, weigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, and render a decision supported by competent, substantial evidence. The Commission reviews the evidentiary and administrative record and the referee’s decision to determine whether the referee followed the proper procedures, adequately developed the evidentiary record, made appropriate and properly supported findings, and properly applied the reemployment assistance law established by the Florida Legislature. The Commission cannot reweigh the evidence and the inferences to be drawn from it. Further, absent extraordinary circumstances, the Commission cannot give credit to testimony contrary to that accepted as true by the referee.

Having considered all arguments raised on appeal and having reviewed the hearing record, the Commission concludes that the referee sufficiently followed the proper procedures and the case does not require reopening or remanding for further proceedings. The referee's material findings are supported by competent, substantial evidence. The referee also correctly applied the law in deciding the case.

The issue before the Commission is whether the claimant established eligibility for a weekly benefit amount of PUA greater than the minimum PUA weekly benefit amount. 15 U.S.C. §9021(d); 20 C.F.R. §625.6; §443.111(3), Fla. Stat.

A "covered individual" as defined by the CARES Act is eligible for PUA benefits in the amount set by federal law. *See* 15 U.S.C. §9021(d)(1) & (2). The presumptive amount is that which would be payable for a similarly-situated individual under state law formulas based on the individual's wage credits from covered employment during the most recent tax year that has ended prior to the first week the claimant certifies that his or her unemployment or inability to work or unavailability to work was a direct result of COVID-19 as defined in federal law. 15 U.S.C. §9021(d)(1)(A)(i); 20 C.F.R. §625.6(a); §443.111(3), Fla. Stat. However, for an individual who is self-employed or works in non-covered employment in whole or part, the employee's non-covered wages or self-employment earnings from lawful employment during that period will also be considered. 15 U.S.C. §9021(d)(2); 20 C.F.R. §625.6(a).

The PUA weekly benefit amount is calculated using existing state wage records and any additional supporting documentation provided by the claimant to substantiate employment wages or self-employment income. Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter No. 16-20, Change 1 at I-4, #13 (Apr. 27, 2020) ("UIPL No. 16-20, Change 1"). A claimant who has no wages or insufficient wages from employment, or has no income or insufficient net income from self-employment, to compute a weekly benefit amount under state law, is entitled to the minimum PUA weekly benefit amount of \$125. 15 U.S.C. §9021(d)(1)(A)(i); 20 C.F.R. §625.6(b); UIPL No. 16-20, Change 1 at I-4, #14; Emp. & Training Admin., U.S. Dep't of Labor, Unemp. Ins. Program Letter No. 03-20 at I-1 (Dec. 12, 2019).

The claimant's work as a Lyft and Uber driver was not employment as defined by Section 443.1216(1)(a), Florida Statutes, for reemployment assistance purposes. *See McGillis v. Dept. of Economic Opportunity*, 210 So. 2d 220 (Fla. 3d DCA 2017) (Uber drivers are independent contractors for reemployment assistance purposes). Consequently, the revenue received was from self-employment and does not constitute wages as defined by Section 443.1217(1), Florida Statutes. For self-employed individuals, the PUA weekly benefit amount is computed using the net income derived from the performance of services reported on the individual's

income tax return.¹ 20 C.F.R. §625.6(a)(2); UIPL No. 16-20, Change 1 at I-6, #22. Here, the claimant's 2019 tax return reflects that his business expenses almost equaled his gross income. The two 2019 Schedule C Profit or Loss from Business tax forms for the two ride-share companies he worked with show a net profit of \$3,034 for Uber and a \$2,938 loss for Lyft, for a combined total net income of \$96.² When the claimant's net income is prorated across the four quarters of his base period and the prorated net income in one quarter is divided by 26 in accordance with Section 443.111(3), Florida Statutes, the calculated amount is well below the minimum PUA weekly benefit amount. Consequently, the claimant is entitled to the minimum PUA weekly benefit amount of \$125.

In his request for review, the claimant contends that his taxable income from self-employment is low due to his claiming vehicle expenses, and suggests that the amounts reported on his 1099 forms from Lyft and Uber should be used. Those forms reflect gross earnings, however, and those earnings were used in the Schedule C forms to determine the net amount of income after reduction by permissible expenses, including vehicle expenses. Under federal law, net income is the relevant figure, and we cannot permit the claimant to take one position in his federal tax return and a different one here. Thus, his argument is respectfully rejected.

¹ In R.A.A.C. Docket No. 21-00175 (April 19, 2021), we explained that under Disaster Unemployment Assistance regulations, self-employment income must derive from "the performance of services" by the claimant in order to be credited for PUA benefit calculations. For that reason, we look to income reported on Schedule C or Schedule F.

² The net amount is also shown on line 9 of the Schedule 1, and line 7a of the Form 1040.

The referee's decision is affirmed.

It is so ordered.

REEMPLOYMENT ASSISTANCE APPEALS COMMISSION

Frank E. Brown, Chairman
Thomas D. Epsky, Member
Joseph D. Finnegan, Member

This is to certify that on

5/28/2021 ,

the above order was filed in the office of the Clerk of the Reemployment Assistance Appeals Commission, and a copy mailed to the last known address of each interested party.

By: Benjamin Bonnell

Deputy Clerk



DEPARTMENT OF ECONOMIC OPPORTUNITY
REEMPLOYMENT ASSISTANCE PROGRAM
PO BOX 5250
TALLAHASSEE, FL 32314 5250



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IMPORTANT: For free translation assistance, you may call 1-800-204-2418. Please do not delay, as there is a limited time to appeal.

IMPORTANTE: Para recibir ayuda gratuita con traducciones, puede llamar al 1-800-204-2418. Por favor hágalo lo antes posible, ya que el tiempo para apelar es limitado.

ENPÒTAN: Pou yon intèpret asistè ou gratis, nou gendwa rélé 1-800-204-2418. Sil vou plè pa pran àmpil tòn, paské tòn limitè pou ou ranpli apèl la.

Docket No. 0062 2210 43-03

Jurisdiction: §443.151(4)(a)&(b) Florida Statutes

CLAIMANT/Appellant

EMPLOYER/Appellee

APPEARANCES

Claimant

Claimant Representative

PANDEMIC UNEMPLOYMENT ASSISTANCE APPEAL DECISION

Important appeal rights are explained at the end of this decision.

Derechos de apelación importantes son explicados al final de esta decisión.

Yo eksplike kèk dwa dapèl enpòtan lan fen desizyon sa a.

Issues Involved:

WAGE CREDITS: Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

Pandemic Unemployment Assistance (PUA):
Whether the claimant is entitled to Pandemic Unemployment Assistance payments, pursuant to 20 CFR, Chapter V, Section 625, and The Robert T. Stafford Pandemic Relief and Emergency Assistance Act.

WAGE CREDITS: Whether the claimant was paid sufficient base period wages to qualify for unemployment compensation benefits, pursuant to Sections 443.036(21), (27), (45); 443.091(1)(g); 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

ADDITIONAL WAGE CREDITS: Whether the claimant earned additional wages for insured work during the base period, pursuant to Sections 443.036(21), (27), (45), 443.111; 443.1216, Florida Statutes; Rule 73B-11.016, Florida Administrative Code.

INSURED WORK: Whether services performed by the claimant during the base period constitute "employment," pursuant to Sections 443.036(21), 443.036(27); 443.1216, Florida Statutes.

Findings of Fact: The claimant filed a claim for Pandemic Unemployment Assistance benefits effective April 12, 2020. A determination of entitlement was issued on May 18, 2020. It found the claimant eligible for a weekly benefit amount of \$125.

During 2019, the claimant worked as a self-employed driver for two ride-share/transportation network companies, Uber and Lyft. The claimant did not earn income from services in Florida from any other source in 2019. The highest quarter of revenue from the work was the 2nd quarter of 2019, in which the claimant was paid \$14,429.54 from the two entities combined. The claimant filed two Schedule C forms, one for each ride-share company, as part of his 2019 income tax return. The Schedule C relating to Uber showed a net profit for the year of \$3,034. The Schedule C relating to Lyft showed a loss of \$2,938, for a combined total profit of \$96.

Conclusions of Law: Section 2102 of the Cares Act of 2020 provides in relevant part:

(d) (2) CALCULATIONS OF AMOUNTS FOR CERTAIN COVERED INDIVIDUALS.--In the case of a covered individual who is self-employed, who lives in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto, and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 2104.

The Code of Federal Regulations, 20 CFR 625.6, provides in relevant part:

§ 625.6 Weekly amount; jurisdictions; reductions.

(a) In all States, except as provided in paragraphs (c) and (d) of this section, the amount of DUA payable to an unemployed worker or unemployed self-employed individual for a week of total unemployment shall be the weekly amount of compensation the individual would have been paid as regular compensation, as computed under the provisions of the applicable State law for a week of total unemployment. In no event shall such amount be in excess of the maximum amount of regular compensation authorized under the applicable State law for that week.

(1) Except as provided in paragraph (a)(2) or (b) of this section, in computing an individual's weekly amount of DUA, qualifying employment and wage requirements and benefit formula of the applicable State law shall be applied; and for purposes of this section, employment, wages, and self-employment which are not covered by the applicable State law shall be treated in the same manner and with the same effect as covered employment and wages, but shall not include employment or self-employment, or wages earned or Employment and Training Administration, Labor § 625.6 paid for employment or self-employment, which is contrary to or prohibited by any Federal law, such as, but not limited to, section 3304(a)(14)(A) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(14)(A)).

(2) For purposes of paragraph (a)(1) of this section, the base period to be utilized in computing the DUA weekly amount shall be the most recent tax year that has ended for the individual (whether an employee or self-employed) prior to the individual's unemployment that was a direct result of the major disaster. The self-employment income to be treated as wages for purposes of computing the weekly amount under this paragraph (a) shall be the net income reported on the tax return of the individual as income from all self-employment that was dependent upon the performance of services by the individual. If an individual has not filed a tax return for the most recent tax year that has ended at the time of such individual's initial application for DUA, such individual shall have a weekly amount determined in accordance with paragraph (e)(3) of this section.

(e) (4) Any individual determined eligible for a weekly amount of DUA under the provisions of paragraph (e)(3) of this section may submit necessary documentation to substantiate wages earned or paid during the base period set forth in paragraph (a)(2) of this section, including those cases where the individual has not filed a tax return for the most recent tax year that has ended, at any time prior to the end of the disaster assistance period. A redetermination of the weekly amount payable, as previously determined under paragraph (b) of this section, shall immediately be made if the wages earned or paid for services performed in employment or self-employment reflected in such documentation is sufficient to permit a computation under paragraph (a) of this section of a weekly amount higher than was determined under paragraph (b) of this section. Any higher amount so determined shall be applicable to all weeks during the disaster assistance period for which the individual was eligible for the payment of DUA.

Chapter 443, Florida Statutes, The Florida Reemployment Assistance Law, provides in relevant part:

Sec. 443.036, Fla. Stat., "Definitions,":

(21) "Employment" means a service subject to this chapter under s. 443.1216 which is performed by an employee for the person employing him or her.

(45) "Wages" means remuneration subject to this chapter under s. 443.1217.

Sec. 443.1216, Fla. Stat., "Employment,":

--Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(1)(a) The employment subject to this chapter includes a service performed, including a service performed in interstate commerce, by:

1. An officer of a corporation.

2. An individual who, under the usual common-law rules applicable in determining the employer-employee relationship, is an employee....

Sec. 443.1217, Fla. Stat., "Wages,":

(1) The wages subject to this chapter include all remuneration for employment, including commissions, bonuses, back pay awards, and the cash value of all remuneration paid in any medium other than cash.

Sec. 443.111 (3), Florida Statutes:

(3) WEEKLY BENEFIT AMOUNT.--An individual's "weekly benefit amount" is an amount equal to one twenty-sixth of the total wages for insured work paid during that quarter of the base period in which the total wages paid were the highest, but not less than \$32 or more than \$275. The weekly benefit amount, if not a multiple of \$1, is rounded downward to the nearest full dollar amount. The maximum weekly benefit amount in effect at the time the claimant establishes an individual weekly benefit amount is the maximum benefit amount applicable throughout the claimant's benefit year.

The default or minimum weekly benefit amount for Pandemic Unemployment Assistance (PUA) in Florida is \$125. The claimant's highest quarter of revenue would have resulted in the maximum weekly benefit amount if it had been wages. But wages are paid to employees, and the employer reports the wages to the Florida Department of Revenue and pays reemployment taxes on those wages. The reported wages, in turn, are used to calculate regular reemployment assistance benefits. The claimant's work, as he recognized, was not employment for reemployment assistance purposes. See, *McGillis v. Dept. of Economic Opportunity*, 210 So.2d 220 (Fla. 3rd DCA 2017) (Uber drivers are independent contractors for reemployment assistance purposes). Consequently, the revenue received was not wages. Income for self-employment is revenue minus legitimate business expenses, which is what the Schedule C income tax form reports. That is the income which must be used pursuant to 20 CFR 625.6(a)(2), quoted above.

In this case, the expenses of the self-employment in 2019 very nearly equaled the claimant's revenue. Consequently, when that net income is pro-rated across the four base period quarters and a quarter's revenue is divided by 26, the calculated weekly benefit amount is well below the default/minimum. That would be the case even if the total net income were to be concentrated in one quarter (but if it was in just one quarter, it would not meet the requirement of total base period wages equaling at least 1½ times the high quarter wages). The calculated weekly benefit amount in this case is correct.

Decision: The determination of entitlement dated May 18, 2020, finding the claimant to have a PUA weekly benefit amount of \$125, is AFFIRMED. The claimant's representative has agreed to charge the claimant \$500 for representation. That amount is reasonable and is approved.

This is to certify that a copy of the above decision was distributed/mailed to the last known address of each interested party on January 25, 2021.

J. HOUSER
Appeals Referee



Kendra Johnson, Deputy Clerk

IMPORTANT - APPEAL RIGHTS: This decision will become final unless a written request for review or reopening is filed within 20 calendar days after the distribution/mailed date shown. If the 20th day is a Saturday, Sunday or holiday defined in F.A.C. 73B-21.003(4), filing may be made on the next day that is not a Saturday, Sunday or holiday. If this decision disqualifies and/or holds the claimant ineligible for benefits already received, the claimant will be required to repay those benefits. The specific amount of any overpayment will be calculated by the Department and set forth in a separate overpayment determination. However, the time to request review of this decision is as shown above and is not stopped, delayed or extended by any other determination, decision or order.

A party who did not attend the hearing for good cause may request reopening, including the reason for not attending, at connect.myflorida.com or by writing to the address at the top of this decision. The date of the confirmation page will be the filing date of a request for reopening on the Department's Web Site.

A party who attended the hearing and received an adverse decision may file a request for review to the Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. If mailed, the postmark date will be the filing date. If faxed, hand-delivered, delivered by courier service other than the United States Postal Service, or submitted via the Internet, the date of receipt will be the filing date. To avoid delay, include the docket number and the last five digits of the claimant's social security number. A party requesting review should specify any and all allegations of error with respect to the referee's decision, and provide factual and/or legal support for these challenges. Allegations of error not specifically set forth in the request for review may be considered waived.

There is no cost to have a case reviewed by the Commission, nor is a party required to be represented by an attorney or other representative to have a case reviewed. The Reemployment Assistance Appeals Commission has not been fully integrated into the Department's CONNECT system. While correspondence can be mailed or faxed to the Commission, no correspondence can be submitted to the Commission via the CONNECT system. All parties to an appeal before the Commission must maintain a current mailing address with the Commission. A party who changes his/her mailing address in the CONNECT system must also provide the updated address to the Commission, in writing. All correspondence sent by the Commission, including its final order, will be mailed to the parties at their mailing address on record with the Commission.

IMPORTANTE - DERECHOS DE APELACIÓN: Esta decisión pasará a ser final a menos que una solicitud por escrito para revisión o reapertura se registre dentro de 20 días de calendario después de la distribución/fecha de envío marcada en que la decisión fue remitida por correo. Si el vigésimo (20) día es un sábado, un domingo o un feriado definidos en F.A.C. 73B-21.003(4), el registro de la solicitud se puede realizar en el día siguiente que no sea un sábado, un domingo o un feriado. Si esta decisión descalifica y/o declara al reclamante como inelegible para recibir beneficios que ya fueron recibidos por el reclamante, se le requerirá al reclamante rembolsar esos beneficios. La cantidad específica de cualquier sobrepago [pago excesivo de beneficios] será calculada por la Agencia y establecida en una determinación de pago excesivo de beneficios que será emitida por separado. Sin embargo, el límite de tiempo para solicitar la revisión de esta decisión es como se establece anteriormente y dicho límite no es detenido, demorado o extendido por ninguna otra determinación, decisión u orden.

Una parte que no asistió a la audiencia por una buena causa puede solicitar una reapertura, incluyendo la razón por no haber comparecido en la audiencia, en connect.myflorida.com o escribiendo a la dirección en la parte superior de esta decisión. La fecha de la página de confirmación será la fecha de presentación de una solicitud de reapertura en la página de Internet del Departamento.

Una parte que asistió a la audiencia y recibió una decisión adversa puede registrar una solicitud de revisión con la Comisión de Apelaciones de Servicios de Reempleo; Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Fax: 850-488-2123); <https://raaciap.floridajobs.org>. Si la solicitud es enviada por correo, la fecha del sello de la oficina de correos será la fecha de registro de la solicitud. Si es enviada por telefax, entregada a mano, entregada por servicio de mensajería, con la excepción del Servicio Postal de Estados Unidos, o realizada vía el Internet, la fecha en la que se recibe la solicitud será la fecha de registro. Para evitar demora, incluya el número de expediente [docket number] y los últimos cinco dígitos del número de seguro social del reclamante. Una parte que solicita una revisión debe especificar cualquiera y todos los alegatos de error con respecto a la decisión del árbitro, y proporcionar fundamentos reales y/o legales para substanciar éstos desafíos. Los alegatos de error que no se establezcan con especificidad en la solicitud de revisión pueden considerarse como renunciados.

No hay ningún costo para tener un caso revisado por la Comisión, ni es requerido que una parte sea representado por un abogado u otro representante para poder tener un caso revisado. La Comisión de Apelación de Asistencia de Reempleo no ha sido plenamente integrado en el sistema CONNECT del Departamento. Mientras que la correspondencia puede ser enviada por correo o por fax a la Comisión, ninguna correspondencia puede ser sometida a la Comisión a través del sistema CONNECT. Todas las partes en una apelación ante la Comisión deben mantener una dirección de correo actual con la Comisión. La parte que cambie su dirección de correo en el sistema CONNECT también debe proporcionar la dirección actualizada a la Comisión, por escrito. Toda la correspondencia enviada por la Comisión, incluida su orden final, será enviada a las partes en su dirección de correo en el registro con la Comisión.

ENPÒTAN - DWA DAPÈL: Desizyon sa a ap definitiv sòf si ou depoze yon apèl nan yon delè 20 jou apre dat distribisyon/postaj. Si 20yèm jou a se yon samdi, yon dimanch oswa yon jou konje, jan sa defini lan F.A.C. 73B-21.003(4), depo an kapab fèt jou aprè a, si se pa yon samdi, yon dimanch oswa yon jou konje. Si desizyon an diskalifye epi/oswa deklare moun k ap fè demann lan pa kalifye pou alokasyon li resevwa deja, moun k ap fè demann lan ap gen pou li remèt lajan li te resevwa a. Se Ajans lan k ap kalkile montan nenpòt ki peman anplis epi y ap detèmine sa lan yon desizyon separe. Sepandan, delè pou mande revizyon desizyon sa a se delè yo bay anwo a; Okenn lòt detèminasyon, desizyon oswa lòd pa ka rete, retade oubyen pwolonje dat sa a.

Yon pati ki te gen yon rezon valab pou li pat asiste seyans lan gen dwa mande pou yo ouvri ka a ankò; fòk yo bay rezon yo pat ka vini an epi fè demann nan sou sitwèb sa a, connect.myflorida.com oswa alekri nan adrès ki mansyone okomansman desizyon sa a. Dat cofimasyon page sa pral jou ou ranpli deman pou reouvewti dan web sit depatman.

Yon pati ki te asiste odyans la epi li resevwa yon desizyon negatif kapab soumèt yon demann pou revizyon retounen travay Asistans Komisyon Apèl la, Reemployment Assistance Appeals Commission, 1211 Governors Square Boulevard, Suite 300, Tallahassee, FL 32301-2975; (Faks: 850-488-2123); <https://raaciap.floridajobs.org>. Si poste a, dat tenm ap dat li ranpli aplikasyon. Si fakse, men yo-a delivre, lage pa sèvis mesajè lòt pase Etazini Sèvis nan Etazini Nimewo, oswa soumèt sou Entènèt la, dat yo te resevwa ap dat li ranpli aplikasyon.

Pou evite reta, mete nimewo rejis la ak senk dènye chif nimewo sekirite sosyal demandè a sosyal demandè a sekirite. Yon pati pou mande revizyon ta dwe presize nenpòt ak tout akizasyon nan erè ki gen rapò ak desizyon abit la, yo epi bay sipò reyèl ak / oswa legal pou defi sa yo. Alegasyon sou erè pa espesyalman tabli nan demann nan pou revizyon yo kapab konsidere yo egzante.

Pa gen okenn kou pou Komisyon an revize yon ka, ni ke yon pati dwe reprezante pa yon avoka oubyen lòt reprezantan pou ke la li a revize. Komisyon Apèl Asistans Reyanbochaj pa te entegre antyèman nan sistèm CONNECT Depatman an. Byenke korespondans kapab fakse oubyen pòste bay Komisyon an, okenn korespondans pa kapab soumèt bay Komisyon an atravè sistèm CONNECT. Tout pati ki nan yon apèl devan Komisyon an dwe mentni yon adrès postal ki ajou avèk Komisyon an. Yon pati ki chanje adrès postal li nan sistèm CONNECT la dwe bay Komisyon an adrès ki mete ajou a tou. Tout korespondans ke Komisyon an voye, sa enkli manda final li, pral pòste voye bay pati yo nan adrès postal yo genyen nan achiv Komisyon an.

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.