COURT OF APPEALS DECISION DATED AND FILED

September 22, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

Appeal No. 2024AP2299 **Cir. Ct. No. 2023CV2579**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

TODD BROWN AND SONJA BROWN,

PLAINTIFFS-APPELLANTS,

V.

LABOR AND INDUSTRY REVIEW COMMISSION AND DEPARTMENT OF WORKFORCE DEVELOPMENT,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: GWENDOLYN G. CONNOLLY, Judge. *Affirmed*.

Before Donald, C.J., Colón, P.J., and Geenen, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Todd and Sonja Brown ("the Browns") appeal from an order of the circuit court affirming decisions by the Labor and Industry Review Commission ("LIRC") that concluded that the Browns were disqualified from receiving Pandemic Unemployment Assistance ("PUA") benefits on the basis of fraud.[1] LIRC's decisions also held that the Browns were required to repay the overpaid benefits and were subject to a monetary fraud penalty.

¶2 For the following reasons, we affirm the circuit court's order.

BACKGROUND

¶3 The Browns are spouses and co-owners of a business that sells beer and liquor memorabilia online. In July 2020, the Browns each initiated claims for PUA benefits. Based on the Browns' initial applications and weekly claim certifications, the Department of Workforce Development ("DWD") paid them seventy-four weeks of PUA benefits.

¶4 On their initial applications, the Browns certified that their online business had closed due to a COVID-19 quarantine order, and they had not resumed operations. In their seventy-four weekly claim certifications, the Browns answered "no" to the following three questions: (1) During the week, did you work in your self-employment?; (2) During the week, did you work in employment or receive income from your self-employment?; and (3) During the week, did you receive another type of income you have not reported?

[1] LIRC issued two decisions, one for each of the Browns, but the decisions are identical except for the pronouns used.

¶5 DWD determined that the Browns' "no" answers were knowingly and intentionally false because the Browns continued to operate their online business and make sales during the weeks that they received PUA benefits. DWD issued two decisions that determined the Browns were disqualified from receiving PUA benefits on the basis of fraud, were required to pay back their benefits, and were subject to a monetary fraud penalty.

¶6 The Browns appealed these adverse decisions. An administrative law judge ("ALJ") held hearings to determine whether: (1) the Browns were eligible for PUA benefits; (2) they concealed information from DWD when completing their initial applications and weekly claim certifications; and (3) they were subject to fraud penalties under federal law. The Browns testified that the reason why they answered "no" to their weekly claim certification questions was that they had made mistakes and failed to catch them. The ALJ determined that the Browns concealed information from DWD in both their initial applications and weekly claim certifications, that PUA benefits were overpaid and must be repaid, and that the Browns were subject to fraud penalties.

¶7 The Browns filed petitions for LIRC review of the ALJ decisions. LIRC determined that the Browns were covered individuals under the relevant laws, but it agreed with the ALJ that the Browns committed fraud, that they were required to repay their PUA benefits, and that they were subject to fraud penalties.

¶8 The Browns sought judicial review of LIRC's decisions and the two cases were consolidated. Following briefing, the circuit court affirmed LIRC's decisions.

¶9 The Browns appeal.

DISCUSSION

¶10 The Browns challenge LIRC's determination that they engaged in fraud by giving incorrect answers to questions on their initial PUA benefits applications and their subsequent weekly claim certifications, specifically with regards to the operation of and income generated by their online business. On appeal, we review LIRC's decision, not the decision of the circuit court. ***Operton v. LIRC***, 2017 WI 46, ¶18, 375 Wis. 2d 1, 894 N.W.2d 426.

¶11 Although PUA was established by an act of Congress, it is administered by the states. 15 U.S.C. § 9021(f). State statutes providing for judicial review of unemployment insurance claims govern appeals of decisions involving PUA benefits. 15 U.S.C. § 9021(c)(5)(B). Accordingly, our review is limited by Wisconsin's statute governing judicial review of LIRC's decisions, WIS. STAT. § 108.09(7) (2023-24).[2]

¶12 Under WIS. STAT. § 108.09(7)(c)6., LIRC's decision must be affirmed unless it acted without or in excess of its powers, its decision was procured by fraud, or its findings of fact do not support its order. LIRC's factual findings are conclusive if supported by credible and substantial evidence. *See* § 108.09(7)(c)1. Substantial evidence is "relevant, credible, and probative evidence upon which reasonable persons could rely to reach a conclusion[.]" ***Princess House, Inc. v. DILHR***, 111 Wis. 2d 46, 54, 330 N.W.2d 169 (1983). When the evidence permits more than one reasonable inference, we will not disturb LIRC's choice among those inferences. ***Bernhardt v. LIRC***, 207 Wis. 2d

[2] All references to the Wisconsin Statutes are to the 2023-24 version.

292, 301-02, 558 N.W.2d 874 (Ct. App. 1996). We may not substitute our judgment for LIRC's regarding the weight or credibility of the evidence. Sec. 108.09(7)(f). Whether the facts fulfill a legal standard is a matter of law we review independently. ***Tetra Tech EC, Inc. v. DOR***, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21.

I. LIRC reasonably concluded that the Browns committed PUA benefit fraud.

¶13 It is undisputed that the Browns were "covered individuals" eligible for PUA benefits. However, a "covered individual" can be disqualified from receiving benefits if the individual is found to have committed fraud. PUA was modeled after the existing Disaster Unemployment Assistance ("DUA") program codified in 20 C.F.R. § 625, and PUA specifically states that 20 C.F.R. § 625 applies to the PUA program. *See* 15 U.S.C. § 9021(h). DUA regulations include a definition of fraud, which acts to disqualify "covered individuals" from receiving benefits as opposed to rendering an individual "not covered" or "not eligible" for benefits. The relevant federal regulation provides:

> ***Disqualification for fraud.*** Any individual who makes a false statement or misrepresentation of a material fact, knowing it to be false, or knowingly fails to disclose a material fact, in order to obtain a payment to which the individual is not entitled, shall be disqualified[.]

20 C.F.R. § 625.14(i) (citation modified).

¶14 Here, the dispute is whether the Browns knowingly made false statements or misrepresentations of material facts with regard to their initial PUA benefits applications and their weekly claim certifications in order to obtain PUA benefits.

A. LIRC reasonably concluded that the Browns committed fraud in their initial applications.

¶15 We begin by discussing the Browns' initial applications. On their initial applications, the Browns certified that the pandemic directly caused their unemployment because they were unable to reach their place of employment due to an imposed quarantine. Specifically, the Browns alleged that the Safer at Home Order issued by Governor Evers and DHS on March 24, 2020 and an unspecified quarantine order from the City of Milwaukee prevented them from going to their warehouse or obtaining new inventory.

¶16 On appeal, the Browns argue that they honestly believed that a quarantine order prevented them from reaching their place of employment, and no evidence suggests otherwise. Moreover, even if the Browns were wrong, they claim that any potential misrepresentation on their initial applications were not material because benefits are paid based on representations made in their weekly claim certifications, not representations made in their initial applications. Finally, the Browns contend that because LIRC ultimately concluded that they were eligible for PUA benefits for an alternative reason,[3] it was not material that the reason stated on their initial applications might have been false.

¶17 We disagree with the Browns. There is ample evidence in the record for LIRC to infer that the Browns did not actually believe that any quarantine order prevented them from reaching their place of employment. It was reasonable for LIRC to conclude that the Browns could not have believed they were

[3] LIRC concluded that the Browns were eligible for PUA benefits because they were self-employed and experienced a significant diminution of their customary services because of the COVID-19 public health emergency.

prohibited from going to their workplace because they continued to operate their business during the pandemic. The records provided by the Browns showed that they had sales on eBay in almost every week at issue. This is substantial and credible evidence from which LIRC could reasonably find that the Browns intentionally misrepresented their eligibility for PUA benefits, and even if this is not the *only* reasonable inference allowed by the evidence, we are required to defer to the reasonable inference LIRC actually made. ***Bernhardt***, 207 Wis. 2d at 301-02.

¶18 Contrary to the Browns' assertions, this misrepresentation is material even though LIRC concluded the Browns were eligible for PUA benefits for a different reason and even though no benefits were paid as a direct result of the representations made on the initial application. LIRC's finding that the Browns committed fraud means that they are *disqualified* from receiving benefits; disqualification makes whether they were "covered individuals" eligible to receive benefits irrelevant. Knowingly misrepresenting eligibility for PUA benefits in order to receive benefits is fraud under 20 C.F.R. § 625.14(i), and that fraud disqualifies a person from receiving benefits, even if they were otherwise "covered individuals." *See* 20 C.F.R. § 625.14(i)(1). Thus, LIRC did not err by concluding that the Browns committed fraud in their initial applications for PUA benefits that disqualified them from receiving benefits, even if the Browns could later demonstrate they were "covered individuals" for another reason.

B. LIRC reasonably concluded that the Browns committed fraud in their weekly claim certifications.

¶19 We now turn to the Browns' weekly claim certifications. The weekly certifications asked applicants about any income they received during the week. Under 20 C.F.R. § 625.6(f)(2), the weekly amount of PUA benefits payable to an individual is "reduced … by the full amount of any income received during the week for the performance of services in self-employment, regardless of whether or not any services were performed during the week[.]" ***Id.*** The regulation continues: "Notwithstanding the definition of 'wages' for a self-employed individual under [20 C.F.R.] § 625.2(u), the term 'any income' for purposes of this paragraph (f)(2) means gross income." 20 C.F.R. § 625.6(f)(2). The regulation does not define "gross income" or indicate how "gross income" is to be determined, but guidance issued by the United States Department of Labor provides that "state law will determine the definition of 'gross income' for purposes of a self-employed individual." U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2 (July 21, 2020);[4] *see also* ***Pickering v. LIRC***, 156 Wis. 2d 361, 369, 456 N.W.2d 874 (Ct. App. 1990) ("The Department of Labor's interpretation of unemployment compensation laws provides indicia of legislative intent.").

¶20 The parties dispute how "gross income" should be defined for purposes of 20 C.F.R. § 625.6(f)(2). LIRC argues that our prior decision in ***Morgan v. LIRC***, 2024 WI App 39, 413 Wis. 2d 42, 10 N.W.3d 414, controls the definition of "gross income" for purposes of 20 C.F.R. § 625.6(f)(2) while the Browns assert that ***Morgan*** is distinguishable because it did not examine what constitutes "gross income" for "services in self-employment." Instead, the Browns argue that 20 C.F.R. § 625.6(f)(2) only requires disclosure of "gross income" generated by "the performance of services in self-employment," and because the Browns sold tangible products through their online business (i.e., not

[4] A copy of this letter is available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL_16-20_Change_2.pdf.

services), they had no "gross income" to report. The Browns further suggest that we should look to the definition of "wages" in WIS. STAT. § 108.02(26) for guidance in interpreting 20 C.F.R. § 625.6(f)(2) and that "gross income for services in self-employment" is the income remaining after the cost of goods and other business expenses are deducted. Because expenses always exceeded revenue, the Browns contend that they had no "gross income" to report.

¶21 We agree with LIRC. Our decision in ***Morgan*** controls the definition of "gross income" for purposes of 20 C.F.R. § 625(f)(2). In ***Morgan***, the PUA benefit recipient, Morgan, held a 40% ownership interest in a custom sewing business and performed both sales and services for that business. ***Morgan***, 413 Wis. 2d 42, ¶4. Morgan reported income she received from distributions of the sewing business, but LIRC concluded that she was required to report 40% of the sewing business's weekly gross receipts without reduction for the cost of goods sold or other business expenses. ***Id.***, ¶¶1-2, 15. LIRC argued that the definition of "gross income" found in WIS. STAT. § 71.03(1) should apply to the term "gross income" found in 20 C.F.R. § 625.6(f)(2), and we agreed. ***Morgan***, 413 Wis. 2d 42, ¶¶15-16.

¶22 We began our analysis by quoting the relevant portion of 20 C.F.R. § 625.6(f)(2), acknowledging that PUA benefits were to be reduced by the weekly "gross income" "'received during the week for the performance of services in self-employment.'" ***Morgan***, 413 Wis. 2d 42, ¶12 (citation omitted). We noted that the federal regulation did not include a definition of "gross income," but agency guidance provided that "state law [would] determine the definition of 'gross income' for purposes of a self-employed individual." ***Id.*** (citation omitted). We ultimately agreed with LIRC that the definition of "gross income" found in WIS. STAT. § 71.03(1) should apply, providing that "'[g]ross income' from a business or farm consists of the total gross receipts without reduction for cost of goods sold, expenses or any other amounts." ***Morgan***, 413 Wis. 2d 42, ¶15 (alteration in ***Morgan***; citation omitted).

¶23 In reaching the conclusion that WIS. STAT. § 71.03(1) should be applied to define "gross income" for purposes of 20 C.F.R. § 625.6(f)(2), we rejected many of the same arguments raised by the Browns in this case. For example, we rejected the argument that we should be guided by the definition of "wages" contained in WIS. STAT. § 108.02(26), noting that doing so would be "at odds with the distinction drawn in [20 C.F.R.] § 625.6(f)(2) between wages and a self-employed individual's gross income." ***Morgan***, 413 Wis. 2d 42, ¶16. We also rejected Morgan's argument that, by failing to deduct business expenses from a self-employed individual's "gross income," we were creating "'phantom income'" that needed to be reported but was never actually received by the self-employed individual. ***Id.***, ¶18. We stated that "these policy-oriented arguments might have some persuasive force in recommending a different definition of gross income grounded in Wisconsin law," but Morgan did not direct us to an alternative state law definition. ***Id.*** Consistent with ***Morgan***, we reject the Browns' invitation to be guided by § 108.02(26)'s definition of "wages" in determining what "gross income" means in 20 C.F.R. § 625.6(f)(2), and we likewise reject the Browns' argument that "gross income" must be reduced by business expenses.

¶24 Moreover, and contrary to the Browns' argument, we did not interpret the term "gross income" in isolation in ***Morgan***; rather, we interpreted the entire relevant language of 20 C.F.R. § 625.6(f)(2), i.e., "any income received during the week for the performance of services in self-employment" where "'any income' means 'gross income.'" ***Morgan***, 413 Wis. 2d 42, ¶¶1, 12 (citation modified). The Browns argue that it is meaningful that their business sells tangible products rather than services, but the benefit recipient in ***Morgan*** performed a mix of product sales and the sale of services, and we drew no legal distinction between the income generated by either business activity for purposes of determining what income was required to be reported for purposes of reducing PUA benefits under 20 C.F.R. § 625.6(f)(2). *See* ***Morgan***, 413 Wis. 2d 42, ¶¶4, 15-16.

¶25 In sum, we agree with LIRC that ***Morgan*** controls the definition of "gross income" in this case. The Browns were required to report "the total gross receipts" from their business "without reduction for cost of goods sold, expenses or any other amounts." WIS. STAT. § 71.03(1); ***Morgan***, 413 Wis. 2d 42, ¶16. They did not. LIRC did not err in concluding that the Browns committed PUA benefit fraud by failing to report "gross income" as required by 20 C.F.R. § 625.6(f)(2).[5]

C. The Browns' other arguments are not persuasive.

¶26 While the Browns' primary argument pertains to the definition of "gross income," they raise several other arguments. None of them are persuasive.

¶27 First, the Browns assert that DWD failed to meet its burden of proof because the testimony of DWD's investigator was based on conjecture and not

[5] To the extent the Browns argue that we should not look to WIS. STAT. § 71.03(1) for a definition of "gross income" because that definition applies only to § 71.03, we observe that that the statute specifies that the definition of "gross income" applies "[i]n this section[.]" Sec. 71.03(1). It does not say that the definition can *only* apply in that section. Moreover, and importantly, in ***Morgan v. LIRC***, 2024 WI App 39, ¶15, 413 Wis. 2d 42, 10 N.W.3d 414, we specifically applied the § 71.03 definition to 20 C.F.R. § 625.6(f)(2), therefore we are bound to apply the § 71.03 definition to this case. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

supported by other evidence. The DWD investigator testified about a news report regarding the Browns' business in which Todd was interviewed and which showed the warehouse where Todd repairs and stores items for sale. The investigator described the warehouse as a "museum," and speculated that tours of the warehouse might be another source of business income for the Browns.

¶28 Allegations of fraud must be proven by clear and convincing evidence. ***Korhumel Steel Corp. v. Wandler***, 229 Wis. 2d 395, 403, 600 N.W.2d 592 (Ct. App. 1999). While the testimony of DWD's investigator may not constitute clear and convincing evidence in isolation, LIRC relied on additional evidence of fraud in the record to support its conclusion that the Browns committed fraud. After stating the correct standard, LIRC cited the totality of the evidence, including the Browns' multiple weeks of answering claim questions incorrectly, misrepresentations on their initial applications, and not contacting DWD for help. LIRC considered the Browns' eBay transaction history, the sales records provided by Sonja to their accountant, their tax returns, and most importantly, the Browns' testimony. When asked why they did not report working while continuing to operate their business and make sales, the Browns testified that they made mistakes and did not catch the inaccuracies.

¶29 Although it may be reasonable to infer from this evidence that the Browns did not intentionally conceal their weekly income, we conclude it was reasonable for LIRC to reach the opposite inference (i.e., that the Browns intentionally concealed their income and that they were continuing to operate their business while receiving PUA benefits. LIRC, not this court, is tasked with weighing the evidence and making credibility determinations, WIS. STAT. § 108.09(7)(f), and we defer to the reasonable inferences LIRC drew from the evidence even if that evidence would allow for a different reasonable inference,

Bernhardt, 207 Wis. 2d at 301-02. Here, LIRC simply did not believe the Browns had made an honest mistake; the evidence demonstrated that they continued to operate their business and make sales while receiving PUA benefits, but they reported that their business had shut down, that they were not working, and they were not receiving any income from the business. LIRC's finding is supported by substantial and credible evidence, even if that is not the only inference that could be drawn from the evidence. We defer to LIRC's findings.

¶30 Second, the Browns assert that LIRC applied state law instead of federal law in reaching its conclusion that they committed fraud. The Browns specifically fault LIRC for applying WIS. STAT. § 108.04(11), which, in contrast to applicable federal law, does not require a showing that the claimant *intentionally* concealed material information for the purpose of obtaining benefits to which they were not entitled.[6]

¶31 The Browns' argument is misleading. Although LIRC cites WIS. STAT. § 108.04(11)(g)2. when setting forth the standard for PUA benefits fraud, the standard LIRC actually articulates is the federal standard that requires the fraud or concealment to be knowingly done.[7] LIRC's decision sets forth the proper federal standard with citations to the appropriate federal authorities. One

[6] WISCONSIN STAT. § 108.04(11)(g)3. states that "[n]othing in this subsection requires [LIRC], when making a finding of concealment, to determine or prove that a claimant had an intent or design to receive benefits to which the claimant knows he or she was not entitled," while 20 C.F.R. § 625.14(i) requires that the fraud or concealment be "knowingly" done for the purpose of receiving benefits to which they are not entitled. *See also* U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (Jan. 8, 2021).

[7] It is unclear to us why LIRC cited WIS. STAT. § 108.04(11)(g)2. when the standard it actually articulated was the federal standard that requires the fraud or concealment to be knowingly done. Setting aside that confusion, although LIRC cited an incorrect statute, it accurately set forth and applied the correct legal standard.

of these authorities directs states to apply a minimum 15% penalty to an individual's overpayment if the overpayment was procured by fraud, or a higher penalty if state law demands. LIRC goes on to cite § 108.04(11)(bh) for the proposition that Wisconsin *does* demand a higher penalty, namely, a 40% penalty for overpayments procured by fraud. This citation to state law was not erroneous because federal authority specifically directs states to apply their own fraud penalty statute if it imposes a penalty higher than 15%. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 16-20, Change 4 (Jan. 8, 2021). LIRC applied the proper federal standards and applied state law only when required by the applicable federal law.

¶32 Third, the Browns highlight that one of the weekly claim certification questions was a compound question, namely, "During the week, did you work in employment or receive income from your self-employment?" The Browns assert, and LIRC agrees, that LIRC cannot base a finding of fraud or concealment on an incorrect answer to a compound question. Assuming this is true, it does not change the disposition of the appeal. Even if we take the Browns' incorrect answer to that compound question out of the equation, the record is still replete with incorrect responses that LIRC reasonably concluded were fraudulent. That is, it supports LIRC's conclusion that the totality of the evidence in the record supports the finding that the Browns committed fraud even without considering their answers to the compound weekly claim certification question.

¶33 Finally, the parties dispute whether LIRC's interpretation of the law is entitled to due weight. We need not resolve this dispute. Here, we arrive at our conclusion without needing to assign any weight to LIRC's specialized knowledge or expertise. Thus, even without assigning LIRC's legal conclusions due weight, we agree with LIRC's conclusions and affirm its order.

CONCLUSION

¶34 We conclude that LIRC's factual findings are supported by credible and substantial evidence, and they support LIRC's order. LIRC applied the correct legal standard and did not act without or in excess of its powers, nor was LIRC's decision procured by fraud. Accordingly, under WIS. STAT. § 108.09(7)(c)6., LIRC's order must be affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.