

Although the claimant did not provide substantial and credible evidence to show that he was the main support for his child during the base period or benefit year of his unemployment claim, because he was under court order to provide support for the child, he is eligible for a dependency allowance pursuant to G.L. c. 151A, § 29(c), as of the week he was ordered to begin paying child support.

**Board of Review
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Issue ID: 0020 2805 15

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny a dependency allowance for the claimant's son. We review, pursuant to our authority under G.L. c. 151A, § 41, and we affirm in part and reverse in part.

The claimant filed a claim for unemployment benefits with the DUA, and the claim was determined to be effective October 16, 2016. When filing his claim, he requested a dependency allowance, pursuant to G.L. c. 151A, § 29(c), for his twin children, one son and one daughter. On November 4, 2017, the DUA issued a Notice of Disqualification, informing the claimant that he was not eligible to receive a dependency allowance for his son.¹ The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant, the review examiner affirmed the agency's initial determination and denied the dependency allowance in a decision rendered on January 17, 2018.

In her decision, the review examiner determined that the claimant had not shown that he was providing the main support for his son, and, thus, the claimant was not eligible to receive the dependency allowance pursuant to G.L. c. 151A, § 29(c). After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we accepted the claimant's application for review and remanded the case to the review examiner to take additional evidence as to whether the claimant was providing the main support for his son. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record.

The issue before the Board is whether the review examiner's conclusion that the claimant is not eligible to receive a dependency allowance for his son is supported by substantial and credible

¹ The dependency allowance for the daughter was approved. See Consolidated Finding of Fact # 32; Remand Exhibit # 8.

evidence and is free from error of law, where the claimant was court-ordered to pay child support beginning March 24, 2017.

Findings of Fact

The review examiner's consolidated findings of fact are set forth below in their entirety:

1. On February 5, 2016, the claimant's former significant other (the Mother) gave birth to twins, the claimant's son (the Son), social security number, xxx-xx-[AAAA], and the claimant's daughter (the Daughter), social security number xxx-xx-[BBBB].
2. The claimant is the natural father of the Son and the Daughter.
3. In April 2016, the Mother filed a claim for unemployment benefits effective for April 10, 2016, with a benefit year expiration date of April 8, 2017.
4. When the Mother filed her unemployment claim, she requested to receive dependency allowances for the Son and the Daughter.
5. In October 2016, the claimant opened a claim for unemployment benefits with an effective date of October 16, 2016, and a benefit year expiration date of October 14, 2017.
6. When the claimant filed his unemployment claim, the Department of Unemployment Assistance (the DUA) established his base period as October 1, 2015 through September 30, 2016.
7. The claimant's weekly benefits allowance was established as \$180.00 for twenty-five (25) weeks.
8. At the time the claimant filed his unemployment claim, he lived with his mother and his oldest daughter, aged eight (8) (the Daughter 2).
9. The claimant paid his mother \$100 a week for rent, food, and living expenses.
10. The claimant received approximately \$350 a month in food stamps.
11. On an unknown date, the claimant applied to receive dependency allowances for the Son and the Daughter.
12. As of the effective date of the claimant's claim, the Son and the Daughter lived with the Mother and their grandmother in Saugus, Massachusetts.
13. The Mother received SNAP benefits and cash benefits from the Department of Transitional Assistance in an unknown amount.

14. The Mother worked part-time. It was unknown what her gross monthly wages were.
15. It was unknown what the Mother's expenses were during the base period of the claimant's claim.
16. It was unknown what the Mother's expenses were during the benefit year of the claimant's claim.
17. During his based period, the claimant was not under a court order to pay child support to the Mother.
18. The claimant did not pay the Mother child support during the base period of his unemployment claim.
19. The claimant did not provide the Mother with any money or support during the base period of his unemployment claim.
20. From October 16, 2016, until March 24, 2017, the claimant did not pay child support to the Mother and did not have visitation with the Son and the Daughter.
21. From October 16, 2016, until March 24, 2017, the claimant did not provide the Mother with any money or support and did not have visitation with the Son and the Daughter.
22. On an unknown date during the first quarter of 2017, the claimant worked eight (8) hours and earned \$96.00.
23. On March 24, 2017, the claimant was court ordered to pay child support for the Son and the Daughter in the amount of \$56 a week for both children, or \$28 a week for each child.
24. Beginning on March 24, 2017, the claimant had visitation with the Son and the Daughter on the weekends, from Friday evening to Sunday evening. During his weekend visitation, he provided formula and diapers as the Son and the Daughter needed.
25. The week ending April 22, 2017, was the claimant's last payable week of unemployment benefits.
26. Around April, 2017, the claimant applied to receive social security benefits.
27. In or about August, 2017, the Daughter 2 was approved as a payee for the claimant's social security benefits in the amount of approximately \$490.00 a month.

28. On July 13, 2017, the claimant was court ordered to pay child support for the Son and his twin in the amount of \$140 a week for both children, or \$70 a week for each child.
29. In August 2017, the claimant worked twenty-three (23) hours and earned \$391.00.
30. In or about September 2017, the Daughter 2's social security benefits increased to approximately \$587.00.
31. On November 4, 2017, the DUA issued the Mother two Notices of Disqualification under Section 29(c) of the Law for both the Son and the Daughter. The Notices stated, "You are not eligible to receive a dependency allowance because you have failed to establish that you are the parent, step-parent, or court appointed guardian; or are awaiting adjudication of a petition for adoption or subject to a decree or court order to contribute to the support. Additionally you have failed to establish the child is financially dependent on you and that you do provide whole or main support for the child as required."
32. On November 4, 2017, the DUA issued the claimant a Notice of Approval under Section 29(c) of the Law for the Daughter. The Notice stated, "You are eligible to receive a dependency allowance because you are the parent, step-parent, or court appointed guardian; or are awaiting adjudication of a petition for adoption or subject to a decree or court order to contribute to the support."
33. On November 4, 2017, the DUA issued the claimant a Notice of Disqualification under Section 29(c) of the Law for the Son. The Notice stated, "You are not eligible to receive a dependency allowance because you have failed to establish that you are the parent, step-parent, or court appointed guardian; or are awaiting adjudication of a petition for adoption or subject to a decree or court order to contribute to the support. Additionally you have failed to establish the child is financially dependent on you and that you do provide whole or main support for the child as required."

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact, except we clarify that Consolidated Findings ## 26 and 27 refer to an application and receipt of Social Security benefits on behalf of the claimant's eight year old daughter (Daughter 2) for which the claimant was the representative payee. There is nothing in the record to show that the claimant himself was eligible for Social Security benefits. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. As discussed more fully below, we conclude that the claimant is not eligible to receive a dependency allowance until he was court-ordered to pay child support.

G.L. c. 151A, § 29(c), the section of law governing a claimant's eligibility for a dependency allowance, provides, in pertinent part, as follows:

An individual in total or partial unemployment and otherwise eligible for benefits shall be paid for each week of such unemployment, in addition to the amount payable under subsections (a), (b) or (d) as the case may be, the sum of twenty-five dollars for each unemancipated child of such individual who is in fact dependent upon and is being wholly or mainly supported by such individual, and who is under the age of eighteen, or who is eighteen years of age or over and incapable of earning wages because of mental or physical incapacity, or who is under the age of twenty-four and is a full-time student at an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, or who is in his custody pending the adjudication of a petition filed by such individual for the adoption of such child in a court of competent jurisdiction, and for each such child for whom he is under a decree or order from a court of competent jurisdiction to contribute to such child's support and for whom no other person is receiving allowances hereunder; provided, that such child is domiciled within the United States or the territories or possessions thereof

Under this section of law, a claimant may be entitled to a dependency allowance in a variety of circumstances. In this case, two provisions are relevant. The first allows the dependency allowance when the child "is in fact dependent upon and is being wholly or mainly supported by" the claimant requesting the dependency allowance. The second provision allows for the dependency allowance where a claimant "is under a decree or order from a court of competent jurisdiction to contribute to such child's support."

Following our review of the entire record, we conclude, as the review examiner did in her decision, that the claimant has not shown that he was the whole or main support of his son in the base period or benefit year of his claim. The findings indicate that the claimant did not provide support for the son, nor did he live with the son, prior to March of 2017. *See Consolidated Findings of Fact ## 12, 18, 20, and 21.* The son's expenses are unclear from the record, and the claimant did not offer credible information as to how much the son's mother pays to support him. Given the lack of specific information and evidence as to how much support the claimant provided to the son, we cannot conclude that he was the son's main support.

However, the review examiner did find that, as of March 24, 2017, the claimant was under a court order to provide support for the son. *See Consolidated Finding of Fact # 23 and Exhibit # 5.* Because he was under court order to provide support for the son, he may be eligible for a dependency allowance as of then, pursuant to the above-cited statutory provision.

We, therefore, conclude as a matter of law that the review examiner's decision to deny the dependency allowance under G.L. c. 151A, § 29(c), was supported by substantial and credible evidence only for the period prior to the week of March 19, 2017, because, as of that week, claimant was under a court order to support his son.

The review examiner's decision is affirmed in part and reversed in part. The claimant is denied the dependency allowance from October 16, 2016, through March 18, 2017. He is entitled to receive the dependency allowance beginning March 19, 2017, and for subsequent weeks, if otherwise eligible.²

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 27, 2018



Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT
COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws Enclosed)**

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

SF/rh

² We recognize that our decision in this case means that there are different results for the dependency allowance issue for the claimant's twin children. However, we can only address an issue which is properly before us, and the circumstances behind the approval of the dependency allowance for the claimant's daughter (the twin of the son at issue here) is not before us. The evidence presented with regard to the son supports our conclusion in this case.