

Claimant established that she was the legal guardian and provided the sole financial support for her granddaughter during the benefit year, so she is entitled to a dependency allowance under G.L. c. 151A, § 29(c).

**Board of Review
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Issue ID: 0021 4726 92

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

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

The claimant filed a claim for unemployment benefits with the DUA effective January 8, 2017. On March 15, 2017, the claimant requested dependency allowances for each of her four grandchildren, including [Grandchild A] S. Williams. The request specific to [Grandchild A] S. Williams was denied in a determination issued by the DUA on April 4, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant via telephone, the review examiner affirmed the agency's initial determination and denied the requested dependency allowance in a decision rendered on September 23, 2017.

The requested dependency allowance was denied after the review examiner determined that the claimant did not have a sufficient legal relationship to the child in question and was not the whole or main support of the child pursuant to G.L. c. 151A, § 29(c). The Board accepts the claimant's application for review. 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 entitled to a dependency allowance for [Grandchild A] S. Williams is supported by substantial and credible evidence and is free from error of law, where the claimant was the legal guardian and sole support of the minor child for a period of five months during her benefit year.

Findings of Fact

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

1. The claimant filed for unemployment benefits effective 01/08/2017. The base period of the claimant's claim extends from 01/01/2016 to 12/31/2016.

2. The claimant's granddaughter, [Grandchild A] ([Grandchild A]), was born on 03/27/2012.
3. [Grandchild A]'s social security number ends in [XXXX].
4. [Grandchild A] did not live with the claimant during the base period. [Grandchild A] began living with the claimant on 02/01/2017, and lived with the claimant until 09/05/2017.
5. The claimant is [Grandchild A]'s maternal grandmother. The claimant and [Grandchild A]'s biological mother (mother) entered into a "private arrangement" on approximately 02/01/2017 that the claimant would temporarily care for [Grandchild A].
6. The claimant does not know whether any court orders are in place ordering child support be paid for [Grandchild A].
7. On 04/06/2017, a Justice of the Bristol Division of the Probate and Family Court issued an "Order Appointing Temporary Guardian of a Minor" identifying the claimant as temporary guardian of [Grandchild A] (the order). The order expired on 05/02/2017, at which point a review hearing was held and the claimant's temporary guardianship of [Grandchild A] was extended. Ultimately, the claimant was ordered as [Grandchild A]'s temporary guardian until 09/05/2017, at which time [Grandchild A] entered foster care.
8. At no point was the claimant appointed as [Grandchild A]'s permanent legal guardian.
9. The claimant alone, and no other individual, provided financial support towards [Grandchild A]'s care between 02/01/2017 and 09/05/2017 when [Grandchild A] lived with the claimant.
10. No other individual is claiming [Grandchild A] as a dependent on a claim for unemployment benefits.

Ruling of the Board

In accordance with our statutory obligation, we review the review examiner's decision to determine: (1) whether the findings of fact are supported by substantial and credible evidence; and (2) whether the original conclusion that the claimant is not entitled to benefits is free from error of law. Upon such review, the Board adopts the review examiner's findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's conclusion that the claimant is not entitled to a dependency allowance pursuant to G.L. c. 151A, § 29(c).

G.L. c. 151A, § 29(c) 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

The review examiner disqualified the claimant from a dependency allowance in part because she concluded that the claimant's relationship to [Grandchild A] S. Williams, that of a court-ordered temporary guardianship, was not "sufficient". However, G.L. c. 151A, § 29(c), only refers to an "unemancipated child of such individual" without reference to the required legal relationship. DUA policy, documented in § 1652(B) of the Service Representative Handbook, allows any of the following individuals to obtain a dependency allowance: a step-parent, a parent awaiting an adjudication of adoption, an individual with a legally binding child support order, or a court-appointed guardian. There is no requirement that the relationship be permanent rather than temporary, and we see no basis to add this requirement.

The review examiner also concluded that the claimant did not meet the requirement to be the whole or main support of the child because the claimant did not begin supporting the child until after the effective date of her unemployment claim. G.L. c. 151A, § 29(c), only requires that the child "is in fact dependent upon and is being wholly or mainly supported by such individual," without reference to the time period in question. While § 1652(C) of the Service Representative Handbook states that the claimant must be "the child's main financial support *during the base period of the claim*" (emphasis added), this provision exists in order to provide clarity in situations where multiple parents contribute financial support to the same child. This provision does not envision a scenario where no parental relationship existed until after the unemployment claim was filed.

Here, the findings provide that the claimant was both the legal guardian of and sole financial support for the minor child [Grandchild A] during the period in question — April 6, 2017 through September 5, 2017. In light of these factors, we conclude as a matter of law that the claimant has met all the requirements of G.L. c. 151A, § 29(c), and is entitled to a dependency allowance for this period of time.

The review examiner's decision is reversed. The claimant is entitled to a dependency allowance for the week ending April 8, 2017, through the week ending September 9, 2017, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 23, 2017



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.

JRK/rh