

Claimant established that he was eligible for a dependency allowance, where he credibly testified he had earned more than his wife did. Although the claimant's base period did not correspond directly with his 2016 tax documents, the claimant provided his Form 1040 federal income tax and W-2 forms for himself and his wife, proving he contributed more than 50% toward the support of their children.

**Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874**

**Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member**

Issue ID: 0022 1564 20

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Allison Williams, a review examiner of the Department of Unemployment Assistance (DUA), to deny a dependency allowance to the claimant for his daughter. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant became separated from employment and filed a claim for unemployment benefits with the DUA on June 23, 2017, which was subsequently approved. Additionally, the claimant requested a dependency allowance to supplement his weekly benefits, which the agency denied on June 24, 2017. The claimant appealed that 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 disqualified the claimant from receiving a dependency allowance, in a decision rendered on August 29, 2017. We accepted the claimant's application for review.

The dependency allowance benefit was denied after the review examiner determined that the claimant and his wife contributed equally to the support for their daughter and, thus, the claimant was not providing more than 50% of the financial support for his household and child, 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 remanded the case to the review examiner to take additional evidence about the amount of wages the claimant and his wife contributed to their household income, respectively. 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 did not qualify for a dependency allowance because he did not contribute more than 50% of the financial support for his household and child is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

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

1. The claimant applied for benefits on 6/23/17.
2. The claimant's filing on 6/23/17, established a base period consisting of the last four completed calendar quarters between 4/1/16 and 3/31/17.
3. The Department found the claimant eligible for a benefit amount of \$650.00 per week. The claimant's wife works full time, 40 hours a week earning \$22.00 an hour. The claimant earned \$54,591.50 in 2016. His wife earned \$38,968.97 in 2016. The claimant's average weekly wage prior to his separation was \$1,720. The claimant's wife's average weekly wage in June of 2017 was \$1,257.92. (Remand Exhibit 6)
4. The claimant added his dependent child on his claim online.
5. The claimant entered that he had not contributed more than 50% of the support of his children in the last 15 months. He believed the question was asking if he contributed more than 50% of support for his children as a result of a divorce.
6. The claimant is married and lives with his wife and two children, daughter [A] born 11/28/97 and his son [B] born 1/31/02. The claimant has no other dependent children for whom he provided financial support.
7. The claimant's wife has not applied for unemployment benefits since April 1, 2016.
8. Both the claimant and his wife contributed all of their earnings into a joint account for the support of their household.

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 and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we do not believe these findings sustain a denial of the dependency allowance at issue.

Initially, the review examiner denied the dependency allowance pursuant to G.L. c. 151A, § 29(c), which 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, ... 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

Our analysis is also guided by §1652(C) of the DUA Service Representative Handbook, which states, in pertinent part, as follows:

A dependent is considered wholly or mainly supported by a claimant when the claimant provides more than 50% of the child's support. The claimstaker will ask if the support comes from all expenses incurred, including but not limited to: housing, food, clothing, transportation, and other related expenses The claimant must establish that he or she was the child's main financial support during the base period of the claim.

After remand, the review examiner found the claimant is married and lives with his wife, their daughter (currently 20 years old), and their son (currently 15 years old). The claimant has no other dependent children for whom he provides financial support, and both he and his wife contribute all of their earnings into a joint account for the support of their household.

After remand, the review examiner also found that the claimant earned \$54,591.50 in 2016, while his wife earned \$38,968.97 that same year. The claimant corroborated these earnings by providing copies of the 2016 W-2 forms issued to him and his wife, as well as their federal income tax Form 1040 for 2016. *See* Remand Exhibit # 6, pp. 1–4. The weekly pay stubs for the claimant and his wife also show that his hourly rate of \$43.00 exceeded hers of \$21.85. *Compare* Remand Exhibit # 6, pp. 13 and 9.¹ While the base period of the claimant's claim (April 1, 2016, through March 31, 2017) does not coincide directly with the 2016 calendar year financial information provided in the W-2 forms and Form 1040, we believe the data provided by the claimant adequately establishes that he contributed more than 50% toward the support of his household for the purpose of receiving a dependency allowance.

We, therefore, conclude as a matter of law that the claimant is entitled to receive a dependency allowance for his daughter pursuant to G.L. c. 151A, § 29(c).

¹The respective hourly rates paid to the claimant and his wife, while not explicitly incorporated into the review examiner's findings, are part of the unchallenged evidence introduced at the remand hearing and placed in the record and are thus properly referred to in our decision today. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

The review examiner's decision is reversed. The claimant is entitled to a dependency allowance for his daughter, from the week ending June 2, 2017, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 15, 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.

JPC/rh