0023 9238 50 (May 21, 2018) – The government benefit of food stamps should be considered income of the parents receiving it, rather than a separate source of support. Because the claimant established that he provided more than 50% of the financial support for the minor child, he is entitled to a dependency allowance pursuant to G.L. c. 151A, § 29(c).

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Issue ID: 0023 9238 50

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 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 December 10, 2017. At that time, the claimant requested a weekly dependency allowance for his son, [Child's Name], which was denied in a determination issued by the DUA on December 11, 2017. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits, attended by the claimant and his wife via telephone, the review examiner affirmed the agency's initial determination and denied the requested dependency allowance in a decision rendered on January 25, 2018.

The requested dependency allowance was denied after the review examiner determined that the claimant was not the whole or main support of the child, pursuant to G.L. c. 151A, § 29(c). The Board accepted 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, which is that the claimant is not entitled to a dependency allowance for [Child's Name], is supported by substantial and credible evidence and is free from error of law, where the claimant's family received governmental assistance greater than the claimant's income from employment.

Findings of Fact

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

1. The claimant is the parent of [Child's Name], whose social security number ends in [XXXX], hereafter referred to as "The Child."

2. The Child was born on September 30, 2015.

3. The claimant's annual income is $18,274.16.

4. The claimant's wife's annual income is $10,000.

5. The claimant's family lives in a home with a market rent of $1900 a month. They pay $165 under a Section 8 voucher.

6. The claimant's family receives $262 in food stamps.

7. The Child resides in the United States with the claimant, the claimant's wife and a half sibling.

8. On December 11, 2017, a determination was issued, under Issue Identification Number 0023 9238 50-01, stating that the claimant was not entitled to a dependency allowance for The Child as of December 10, 2017 and for an indefinite period thereafter.

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 . . . 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.

It is undisputed that the claimant is the child's natural father, that the child is under the age of eighteen, and that the child lives within the United States. The review examiner disqualified the claimant from a dependency allowance because she concluded that the claimant did not meet the requirement to be the whole or main support of the child. Despite the fact that the claimant's wages exceeded his wife's during the base period, and the fact that no other individual provided support for the child, the review examiner concluded that the claimant did not provide more than 50% of the support for the child, because the family received governmental benefits which exceeded the claimant's employment income.

This Board previously addressed a similar case, concluding that the government benefits "are properly considered part of the claimant's household income which she uses to support her child," rather than a separate source of support. *See* Board of Review Decision 0012 6566 49 (Mar. 16, 2015).[1] In the present case, the claimant and his wife jointly kept a home and jointly provided for their two children. As such, the governmental benefits intended for the use of the family should be equally attributed to the two parents. However, as the claimant's employment income greatly outweighed his wife's, it must be concluded that the claimant's support for the child in question was greater than 50%.

In light of the above, 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.

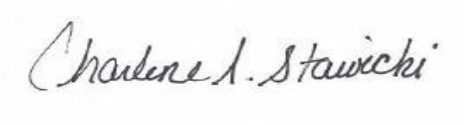
[1] Board of Review Decision 0012 6566 49 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

The review examiner's decision is reversed. The claimant is entitled to a dependency allowance beginning December 10, 2017, if otherwise eligible.



BOSTON, MASSACHUSETTS
DATE OF DECISION - May 21, 2018

Paul T. Fitzgerald, Esq.
Chairman



Charlene A. Stawicki, Esq.
Member

Member Michael J. Albano did not participate in this decision.

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