

Government housing and food stamp assistance is deemed to be an additional part of the claimant's household income that she uses to support her son. As such, the claimant has shown that she is the main support for her child and she is entitled to a dependency allowance under G.L. c. 151A, § 29(c).

**Board of Review
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Issue ID: 0029 0738 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. 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 20, 2019. At that time, the claimant requested a weekly dependency allowance for her son, [Child B], which was denied in a determination issued on January 23, 2019. 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 benefits in a decision rendered on March 2, 2019. We accepted the claimant's application for review.

The requested dependency allowance was denied after the review examiner determined that the claimant was not providing the majority of financial support for the child and, thus, she was not entitled to a dependency allowance pursuant to G.L. c. 151A, § 29(c). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant was not entitled to a dependency allowance because the government's financial assistance to the household exceeded the amount of money that the claimant contributed to the household, is supported by substantial and credible evidence and is free from error of law.

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 B], whose social security number ends in X[XXXX], hereafter referred to as The Child.

2. The Child was born on June 24, 2015.
3. The claimant provides \$8667.06 in support to the household.
4. The claimant and her children live in subsidized housing. At present, with no income, the claimant is required to pay \$25 a month towards an apartment whose market rent value is approximately \$1500.
5. The claimant and her children receive \$340 a month in food assistance from the state.
6. The Child resides in the United States with the claimant and The Child's minor sister.
7. On January 23, 2019, a determination was issued, under Issue Identification Number 0029 0738 15-01, stating that the claimant was not entitled to a dependency allowance for The Child as of January 20, 201[9] and for an indefinite period thereafter.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner's conclusion 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 legal conclusion that the claimant is ineligible for a dependency allowance under 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.

There is no question that [Child B] is the claimant's son, that he is under eighteen, unemancipated, and that he lives with the claimant in 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 contributes \$8,667 to the household, the review examiner concluded that the claimant did not provide more than 50% of the support for the child, because the family received governmental housing and food assistance, which exceeded the claimant's employment income.

We have previously held that 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 The claimant's household should be treated no differently. The subsidized housing and food assistance support that she receives from the state or federal government are deemed to be provided by the claimant. Thus, the record shows that the claimant provides the main support for her son.

We, therefore, 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.

The review examiner's decision is reversed. The claimant is entitled to a dependency allowance for her son for the week beginning January 20, 2019, and for subsequent weeks, if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - June 11, 2019



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.

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

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.

AB/ jv