

The claimant performed PCA services for her daughter during her base period. The daughter covered the cost of these services through a MassHealth program, and MassHealth regulations provide that this is an employment relationship between the MassHealth member and her PCA. Therefore, the claimant's PCA services were in the employ of her daughter, and her base period wages from that work may not be used in calculating her monetary eligibility pursuant to G.L. c. 151A, § 6(d).

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Issue ID: 0082 2609 06

ORDER TO RESCIND AND RE-ISSUE FINAL DECISION

Introduction and Procedural History of this Appeal

On August 30, 2024, the Board of Review issued a decision to reverse a decision by a review examiner in the Department of Unemployment Assistance (DUA). This had the effect of allowing the wages that the claimant received for services as a Personal Care Aide (PCA) to be counted for purposes of monetary eligibility under her 2023-01 unemployment claim. Because the Board's decision was based upon a legal error, the Board hereby rescinds and re-issues its final decision. Pursuant to our authority under G.L. c. 151A, § 41, we affirm the review examiner's decision.

The claimant filed a claim for unemployment benefits with the DUA, effective December 17, 2023. On February 24, 2024, the DUA sent the claimant a monetary determination informing her that she was monetarily eligible for an unemployment claim with a benefit rate of \$587.00 per week. 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 in a decision rendered on June 6, 2024. We accepted the claimant's application for review.

The review examiner affirmed the agency's monetary determination because she concluded the claimant worked in the employ of her daughter, and, therefore, her wages from her work as a PCA were exempt under G.L. c. 151A, § 6(d). 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's wages from the instant employer could not be used in calculating her monetary eligibility for benefits because the claimant was employed by her daughter, 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. Eleven (11) years ago, the claimant's daughter (the daughter) had an accident.
2. The claimant has worked as the daughter's personal care attendant (PCA) for ten (10) years.
3. Prior to December 2023, the claimant was working fifty-five (55) hours per week for the daughter.
4. In December 2023, the daughter moved and a new PCA provides much of the daughter's care.
5. Since December 2023, the claimant has remained available to the daughter to provide care when needed.
6. Since December 2023, the claimant has not worked any hours for the daughter.
7. The daughter paid the claimant for her work through fiscal intermediary A for regular time and fiscal intermediary B for overtime. The daughter's name is on the claimant's 2023 W-2 from fiscal intermediary A. The daughter's name is not on the claimant's 2023 W-2 from fiscal intermediary B.
8. The claimant's paystubs bear the daughter's name.
9. MassHealth has Program Regulations within its Personal Care Manual allowing parents to be carers for their child consumers. The Personal Care Manual does not contain language regarding unemployment benefits.
10. The claimant filed a new claim for unemployment benefits effective 12/17/2023.
11. The primary base period of her claim extended from the 4th quarter of 2022 to the 3rd quarter 2023.
12. During the base period of her claim, the claimant earned the following wages:

	4 th Q 2022	1 st Q 2023	2 nd Q 2023	3 rd Q 2023
The daughter	\$13,606.50	\$15,607	\$15,566.40	\$13,533.75
Company C	\$11,422.22	\$906.39	\$15,626.82	\$14,878.74
Company D		\$4,021.05		

13. The Department of Unemployment Assistance (DUA) excluded the claimant's wages from the daughter when calculating monetary eligibility for unemployment benefits.

14. Using only wages from company C and company D during the base period, the DUA determined the claimant's weekly benefit amount to be \$587.00 with a maximum benefit amount of \$15,262.00.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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. As discussed more fully below, we believe that the review examiner's findings of fact support the conclusion that the claimant's wages from her work as a PCA were exempt.

G.L. c. 151A, § 24, provides, in pertinent part, as follows:

An individual, in order to be eligible for benefits under this chapter, shall—

- (a) Have been paid wages in the base period amounting to at least thirty times the weekly benefit rate; provided, however, that for the period beginning on January first, nineteen hundred and ninety-five the individual has been paid wages of at least two thousand dollars during said base period; provided, further, that said amount shall be increased annually proportionately, rounding to the nearest one hundred dollars, to any increases which have occurred during the prior calendar year in the minimum wage

In order to be eligible for unemployment benefits, the claimant must have earned wages of at least \$6,000.00 in her base period. G.L. c. 151A, § 24(a).¹ Wages are defined under G.L. c. 151A, § 1(s), which provides, in relevant part, as follows:

- (A)“Wages”, every form of remuneration of an employee subject to this chapter for employment by an employer

Because the claimant was providing PCA services for her daughter, we must consider whether the wages the claimant was paid for this work were exempt under G.L. c. 151A, § 6(d). In relevant part, G.L. c. 151A, § 6, provides as follows:

- The term “employment” shall not include: . . . (d) Service performed by an individual in the employ of his son, daughter or spouse

¹ G.L. c. 151A, § 24(a), states that a claimant must have earned \$2,000.00 in the base period. However, this amount has been changed, as required under the statute, based on changes to the minimum wage. For a claim effective between January 1, 2023, and January 6, 2024, the minimum amount of wages needed for a valid unemployment claim is \$6,000.00.

The review examiner concluded that the PCA services performed by the claimant during her base period were exempt under G.L. c. 151A, § 6(d), because the claimant was working in the employ of her daughter. We agree.

During the base period of her claim, the claimant was providing services as a PCA for her daughter through a MassHealth program. Finding of Fact # 9. Regulations governing this MassHealth program can be found at 130 CMR 422, a copy of which were admitted into evidence as Exhibit 4.² These regulations specify that MassHealth will cover the cost of services rendered by a PCA hired by an eligible MassHealth member. *See* 430 CMR 422.402 (defining the term “Personal Care Attendant (PCA)”). However, in various places, these regulations make clear that the member, which in this case is the claimant’s daughter, employs the PCA, including the responsibility for hiring, firing, scheduling, training, supervising, and otherwise directing the PCA. *See* 130 CMR 422.402, 130 CMR 422.420, and 130 CMR 422.421(B). This also includes a requirement that they enter into a contract in which the member assumes responsibility for all employer-related duties. *See* 130 CMR 422.423.

Inasmuch as the MassHealth regulations create an employer-employee relationship between the member and the PCA, we conclude that the daughter is the employing unit for the claimant’s services as her PCA. Because the claimant performed services in the employ of her daughter during her base period, the wages from this PCA work are exempt under G.L. c. 151A, § 6(d). *See* Findings of Fact ## 2, 8, and 9.

However, the claimant performed wage-earning services for two other employers during her base period. Finding of Fact # 12. The DUA correctly determined that these wages could be used to in calculating the monetary eligibility for benefits. Based on these non-exempt earnings, the claimant is monetarily eligible for a weekly benefit amount of \$587.00 and a maximum benefit amount of \$15,262.00. Finding of Fact # 14.

We, therefore, conclude as a matter of law that the wages the claimant earned in the employ of her daughter were exempt pursuant to G.L. c. 151A, § 6(d), and may not be used in determining her monetary eligibility for benefits. We further conclude the claimant is entitled to a weekly benefit amount based on her other non-exempt base period wages.

² Exhibit 4, while not explicitly incorporated into the review examiner’s findings, is part of the unchallenged evidence introduced at the hearing and placed in the record, and it is 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 affirmed. The claimant is monetarily eligible for weekly unemployment benefits in the amount of \$587.00 under her 2023-01 claim.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 27, 2024



Charlene A. Stawicki, Esq.
Member



Michael J. Albano
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT 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.

LSW/rh