

Board of Review
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Issue ID: 0012 6566 49
Claimant ID:

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by Michele Lerner, a review examiner of the Department of Unemployment Assistance (DUA), to deny a dependency allowance to the claimant for her 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 August 5, 2013, which was subsequently approved. On or about January 15, 2014, the claimant requested a dependency allowance to supplement her weekly benefits, which the agency denied on March 21, 2014. 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 disqualified the claimant from receiving a dependency allowance in a decision rendered on May 9, 2014. We accepted the claimant's application for review.

The dependency allowance benefit was denied after the review examiner determined that the claimant received more income from various forms of public assistance than her gross income when she was employed and, thus, was providing less than 50% of the financial support for her household and her 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 took the case 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 did not qualify for a dependency allowance because government assistance programs provided more than 50% of her household income 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 biological mother of Zamyra [], whose social security number ends in 8533, hereafter referred to as Zamyra.
2. Zamyra was born on April 29, 2010.

3. From her birth to August 28, 2013 Zamyra was in the claimant's custody. From August 29, 2013 to January 9, 2014, she was in the custody of the state and in the care of the claimant's mother. On January 10, 2013 custody of Zamyra began to transition back to the claimant. The claimant regained full custody of Zamyra on February 9, 2014.
4. The claimant's mother did not assume financial support of Zamyra, beyond giving her a place to live and getting her occasional gifts. The claimant continued to provide groceries and personal supplies for Zamyra while Zamyra lived with the claimant's mother.
5. Prior to her filing the present unemployment claim, the claimant's average gross pay for her employment was approximately \$1797 a month.
6. The claimant has a Section 8 housing voucher from the US Department of Housing and Urban Development (HUD). This voucher covers her rent after she pays an amount equal to 30% of her adjusted income. Presently the claimant is paying \$25 a month toward her rent HUD is paying the remaining \$2,509.
7. The claimant received and continues to receive \$200 a month in food stamps from the Supplemental Nutritional Assistance Program, SNAP.
8. The claimant received and continues to receive WIC vouchers. These cover the cost of limited amounts of milk, beans and cheese. The exact value of these items is unknown.
9. While the claimant was working she [] received a voucher for childcare from DCF, after which she was responsible to pay \$150 a month for daycare. It is unknown how much [the] voucher at that time covered. DCF is currently paying the full amount of Zamyra's childcare expense. The amount is again unknown.
10. The claimant's unemployment benefit rate on her present claim, effective August 4, 2013 and ending August 2, 2014, is \$210 a week the [sic]. Her benefit credit on this claim is \$6,300. After tax withholding her take home benefit was \$178 a week. The claim was exhausted sometime on or after February 25, 2014, and prior to April 4, 2014.
11. On October 21, 2013, a determination was issued, under Issue Identification Number 0012 6566 49-02, stating that as of August 4, 2013, the clamant was not entitled to a dependency allowance for Zamyra.

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 ultimate 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 analysis and conclusion, whereby she determined that, because the claimant received more in public assistance benefits than she had earned from her employment, the government paid more than 50% of the support to the claimant's child, and the claimant was thus ineligible for a dependency allowance for that child.

Resolution of this matter requires an analysis of 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, ... 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 Representatives 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.* (Emphasis added.)

The review examiner found the claimant receives various subsidies to supplement her income, including housing vouchers, food stamps, WIC vouchers, and childcare assistance. But the fact that the claimant has availed herself of assistance through federal and state government programs that amounts to more than her gross income does not mean that the claimant provides less than 50% of the financial support for her daughter, as the review examiner improperly concluded.

The claimant receives public assistance in various forms to supplement her household income. Undoubtedly, some of these forms of assistance are accessible to the claimant because she is the parent of her child, and these programs exist to support such children. We conclude, as a matter of law, that the government benefits that the claimant receives, to which she has been entitled, are properly considered part of the claimant's household income which she uses to support her child.

The claimant's circumstances are somewhat complicated by the removal of her daughter Zamyra from her custody for a period of time while the claimant was collecting unemployment benefits on this claim, but we conclude, as a matter of law, that the circumstances here do not disqualify this claimant from a dependency allowance.

The review examiner found that the claimant had custody of Zamyra from her birth on April 29, 2010, through August 28, 2013; but that Zamyra was in the custody of the Commonwealth and in the care of the claimant's mother from August 29, 2013, through January 9, 2014. After a month of transition, the claimant regained custody of Zamyra on February 9, 2014. The review examiner also found that, while Zamyra lived with her grandmother, she did not assume financial support of Zamyra. Rather, the claimant contributed to Zamyra's support with groceries and personal supplies while she lived with the claimant's mother. We note that there is no evidence in the record that the claimant was ordered to pay support to her mother while she cared for Zamyra.

We also note that, although the review examiner did not incorporate it into her findings, the claimant testified that her daughter was placed with the claimant's mother because of domestic violence problems.¹

In view of the policy in § 1652(C) of the Service Representatives Handbook that the agency looks to the base period of a claim rather than the benefit year to determine whether a dependency allowance should be granted, and in view of the agency's deference when claimants present circumstances of domestic violence², we conclude as a matter of law that the claimant was her child's main financial support during the base period of her claim for unemployment benefits, and that she qualifies for a dependency allowance.

¹The claimant's allegation that domestic violence prompted the removal of her daughter from her own home, 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).

²See, e.g., G.L. c. 151A, §§ 1(g½) and 25(e), which, respectively, define domestic violence and permit claimants who separate because of domestic violence to collect benefits.

The review examiner's decision is reversed. The claimant is entitled to a dependency allowance for her daughter Zamyra, from the week ending August 17, 2013, and for subsequent weeks if otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 16, 2015



Paul T. Fitzgerald, Esq.
Chairman



Judith M. Neumann, Esq.
Member

Member Stephen M. Linsky, Esq. did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS 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.

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