

Pursuant to G.L. c. 151A, § 69(c), the claimant is entitled to an overpayment waiver because her monthly expenses exceed her monthly income.

**Board of Review
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Issue ID: 0022 1946 62

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 waiver of an overpayment assessment. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant was assessed two overpayment amounts totaling \$4,370.00. She applied for a waiver of recovery of the overpayment on June 12, 2017, and was denied by the agency in a determination issued on July 3, 2017. The claimant appealed the denial of the waiver to the DUA hearings department. Following a hearing on the merits, which the claimant attended, the review examiner affirmed the agency's initial determination and denied the waiver in a decision rendered on December 6, 2017. We accepted the claimant's application for review.

The review examiner determined that, although the claimant was not at fault, recovery of the overpayment would not be against equity and good conscience or defeat the purpose of benefits otherwise authorized, and, thus, the claimant was not entitled to a waiver of overpayment pursuant to G.L. c. 151A, § 69(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 obtain additional testimony and other evidence pertaining to the claimant's income and expenses. The claimant attended the remand hearings. 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 decision, which concludes that recovery of the overpayment would not be against equity and good conscience or defeat the purpose of benefits otherwise authorized, pursuant to G.L. c. 151A, § 69(c), 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 and credibility assessments are set forth below in their entirety:

1. The claimant filed an unemployment insurance claim and obtained an effective date of her claim of 7/12/15.
2. The claimant received benefits to which she was not entitled between 8/30/15 and 9/12/15, and between 9/20/15 and 9/26/15, as she incorrectly reported her earnings for those weeks. The claimant appealed a Notice of Disqualification with regard to the above overpayment. She failed to participate in that hearing.
3. The claimant received benefits for the weeks beginning 2/21/16 to 2/27/16, and the weeks beginning 3/6/16 to 7/9/16.
4. On 4/22/17, DUA sent the claimant a Notice of Disqualification in Issue Identification Number 0019 2562 95-01, stating that the claimant was denied benefits and overpaid for the above weeks. The claimant failed to appeal the above Notice of Disqualification.
5. The claimant is single and lives with her mother. She has no dependent children.
6. The claimant spent the above unemployment insurance monies on car insurance payments, rent, and utility bills. She did not give up the right to receive another type of government benefit when she was initially approved for unemployment insurance benefits.
7. The claimant works as a private nanny.
8. The claimant's current employer reported to DUA that the claimant earned \$2,000 for 400 hours of work during the first quarter of 2017; \$2,800 for 560 hours of work during the second quarter of 2017; \$2,400 for 480 hours of work during the third quarter of 2017; and \$2,800 for 560 hours of work during the fourth quarter of 2017.
9. The claimant's current employer also reported the claimant's wages for the third and fourth quarters of 2016.
10. Based on the above wage information, the claimant's rate of pay as a private nanny is \$5 per hour.
11. The claimant's employer direct deposits \$361.15, biweekly, into the claimant's checking account.
12. The claimant initially received SNAP benefits of \$194 per month. When she initially applied for SNAP benefits, she received [a] portion of her pay from her current employer under the table. The claimant's SNAP benefits were reduced to \$62 per month after the claimant reported earning additional wages from her current employer.

13. The claimant has one savings account and one checking account. The balance of the checking account was \$167.31 as of 3/31/18.
14. The claimant's mother expects the claimant to pay for a portion of the monthly rent and electricity bills. The claimant pays \$86 per month for her mobile phone. The claimant pays approximately \$62 per month for food, using only SNAP benefits to pay for food. She pays approximately \$100 per month for clothing. Her miscellaneous expenses are approximately \$20 per month.
15. The claimant owns a 2010 Chevrolet Malibu. She does not own any other vehicles. She pays approximately \$150 per month for gas and travel expenses.
16. The claimant received a letter dated 5/5/17, stating that she defaulted on her automobile loan and was expected to pay \$376.82 by 5/31/17.
17. The claimant received an automobile insurance bill dated 11/3/17, for \$162.32.
18. The claimant's father gave her approximately \$300 to help pay an automobile repair bill of \$496.99 for a repair on 10/27/17. The claimant contributed approximately \$200 toward the bill.
19. On 1/12/18, the claimant received an automobile loan bill for \$859.64, due 2/4/18.
20. On 2/1/18, the claimant received a \$200 donation from a local organization to assist her with paying her bills.
21. A different organization provided the claimant with a donation a number of months ago and again, more recently.
22. The claimant made payments on the 1/12/18 automobile loan bill in the amount of \$78.41 on 2/20/18, and \$366.82 on 3/7/18.
23. On 3/15/18, the claimant received an automobile loan bill due 4/4/18, for \$288.41.
24. The claimant has one credit card. She did not provide information on the minimum payment she is expected to pay on the credit card. The claimant does not pay for health insurance premiums.

Credibility Assessment:

There were discrepancies between the claimant's expenses as written on the claimant's Waiver Application and the claimant's testimony regarding expenses, at the initial hearing. In the waiver Hearing Decision, the lower expense amounts

on the application were used with regard to food costs, clothing costs, and miscellaneous costs, as the claimant did not provide additional documentation to supplement her testimony at the initial hearing. The claimant provided a letter dated 5/5/17, stating that she defaulted on her automobile loan and was expected to pay \$376.82 by 5/31/17. At the initial hearing, she provided no other documentation to show whether this bill was paid, and if so, by whom, or whether she made any recent automobile loan payments. The claimant listed \$20 in non-reimbursed medical expenses on her waiver application, and at the initial hearing stated that she paid a \$20 co-pay a number of months ago. She did not provide any documentation to verify this or to show that she has additional non-reimbursed medical bills. The claimant did not provide documentation with regard to credit card debt and expected minimum payments per credit card at the initial hearing.

The claimant appealed the waiver Hearing Decision to the Board of Review, and the Board of Review remanded the hearing for additional evidence. The Board of Review asked that the claimant provide documentary evidence to show any changes to her income and/or expenses, and to show whether she is making payments on her 2010 Chevrolet Malibu. At the initial remand hearing on 3/12/18, the claimant stated that on 3/6/18, she mailed documents to DUA to supplement her testimony at the initial hearing. The DUA Hearings Department did not receive these documents. The remand hearing was continued to 4/5/18, to permit the claimant to re-submit these documents, and send any additional documents she believed were relevant to the waiver issue. The claimant presented no additional documentation at the 4/5/18 remand hearing. The claimant stated she could obtain these documents and submit them, and the remand hearing was once again continued, live, to 5/7/18, to allow the claimant to bring the documents in person.

At the 5/7/18 remand hearing, the claimant provided a copy of a \$200 check made out to her, dated 2/1/18, from a local organization; a letter the claimant stated was from her mother; a 2017 W2 from her current employer; a telephone bill due 2/13/18; a DTA income verification document; two automobile loan bills, dated 1/12/18 and 3/15/18, respectively; and checking account statements for January, February, and March 2018. The claimant provided two letters she stated were from her mother, one at the initial hearing, the other at the 5/7/18 remand hearing; the letters provide conflicting information about the claimant's rent and utility expenses. The first letter is dated 10/31/17, and states that the claimant pays her mother \$150 per week toward rent and utilities. \$150 per week is \$650 per month. The second letter is not dated, and states that the claimant pays \$300 per month for rent and an additional \$100 toward electricity, per month, for a total of \$400 per month, and has done so since 6/1/17. The claimant stated at the 5/7/18 remand hearing that she pays \$200 toward rent and \$100 toward electricity to her mother on a monthly basis. The claimant did not provide documentation to verify her monthly rent and electricity payment amounts; nor did she provide documentation to verify the minimum monthly credit card payment she is expected to make, nor did she provide documentation regarding unpaid medical bills. The claimant

stated at the 5/7/18 remand hearing that she could provide her most recent automobile insurance bill; documentation to show that she made her most recent car payment; and documents to show that she received two separate donations from a charitable organization different from the organization that provided the above \$200 donation. The record was held open to 5/15/18, at 1 p.m. The claimant failed to provide the additional documentation, and failed to contact the Hearings Department to request an extension of the deadline.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's consolidated findings of fact and credibility assessment, 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 recovery of the overpayment would not defeat the purpose of benefits otherwise authorized.

The claimant was denied a waiver under G.L. c. 151A, § 69(c), which provides, in relevant part, as follows:

(c) The commissioner may waive recovery of an overpayment made to any individual, who, in the judgment of the commissioner, is without fault and where, in the judgment of the commissioner such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

The DUA regulations further define the phrase, "defeat the purpose of benefits otherwise authorized," as follows:

Defeat the purposes of benefits otherwise authorized means that recovery of the overpayment would deprive the overpaid claimant, or individuals dependent on the claimant, of income required for ordinary and necessary living expenses. This depends upon whether the overpaid claimant or his dependents have income or financial resources sufficient for more than ordinary and necessary needs, or are dependent upon all current income for such needs. Ordinary and necessary living expenses include, but shall not be limited to:

- (a) fixed living expenses, such as food and clothing, rent, mortgage payments, utilities, accident and health insurance, taxes, and work-related transportation expenses;
- (b) medical and hospitalization expenses;
- (c) expenses for the support of others for whom the individual is legally responsible;
- (d) other miscellaneous expenses which may reasonably be considered as part of an individual's necessary and ordinary living expenses.

Under G.L. c. 151A, § 69(c), if the claimant erroneously received unemployment benefits without fault, it is her burden to establish either that the recovery of such benefits would defeat the purpose of benefits otherwise authorized or be against equity and good conscience. Here, the agency found that the claimant was not at fault for the overpayment, and nothing in the record indicates otherwise. However, the examiner denied the claimant's request for a waiver, concluding that recovery of the overpayment would not be against equity and good conscience or defeat the purpose of benefits otherwise authorized. Specifically, the review examiner found that the claimant did not give up a valuable right or change her position for the worse due to her receipt of benefits, and repayment of the overpaid benefits would not deprive her of the income required for her ordinary living expenses.

We agree with the review examiner's conclusion that denial of the waiver would not be against equity and good conscience, as there is no indication in the record that the claimant was placed in a worse position due to her receipt of the unemployment benefits. However, we disagree with the review examiner's conclusion that denying the waiver would not defeat the purpose of benefits otherwise authorized. The claimant's monthly expenses total \$706.00, not including the rent and electricity payments she makes to her mother each month. The review examiner did not make a finding regarding what the claimant pays in rent or electricity, apparently because the claimant provided conflicting evidence regarding these expenses. Even using the lowest amount for these expenses provided by the claimant, \$150.00, her total monthly expenses exceed her monthly net income of \$844.00 (\$62.00 in SNAP benefits plus \$782.00 in wages (\$361.15 biweekly x 26 / 12)). We also note that the review examiner found that the claimant received monetary help from a few charitable organizations to help her pay her bills, which further shows that the claimant is unable to cover her monthly expenses with her income.

In light of the foregoing, we conclude that imposing a repayment upon the claimant would defeat the purpose of benefits otherwise authorized, as meant under G.L. c. 151A, § 69(c).

The review examiner's decision is reversed. The claimant's request for a waiver of recovery of overpaid benefits is granted. The claimant is not liable to repay \$4,370.00 in overpaid benefits.

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 30, 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.

SVL/rh