

**Recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized because the claimant's monthly expenses exceed his monthly income after taxes. Weekly expenses should be multiplied by 4 1/3 to obtain a monthly amount.**

**Board of Review  
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**Issue ID: 0022 6462 67**

## **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 a waiver of recovery of overpaid unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant requested a waiver of recovery of overpaid benefits, which was denied in a determination issued on August 16, 2017. 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 the waiver in a decision rendered on November 10, 2017. We accepted the claimant's application for review.

The review examiner denied the waiver on the grounds that recovery of the overpaid benefits would neither defeat the purpose of benefits otherwise authorized nor be against equity or good conscience pursuant to G.L. c. 151A, § 69(c), and 430 CMR 6.03. 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 to deny the waiver of the claimant's overpayment, as it would not defeat the purposes of benefits otherwise authorized or be against equity and good conscience, was based on substantial and credible evidence and free from error of law.

### Findings of Fact

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

1. On August 8, 2017, the claimant submitted an Application For Overpayment Waiver form to the Department of Unemployment Insurance Benefits (hereinafter the Department) (Exhibit 2).
2. The overpayment did not stem from fraud on the part of the claimant (Exhibit 1).

3. On August 16, 2017, the Department mailed the claimant a Notice of Disqualification denying the claimant's waiver request under Section 69(c) of the Law (Exhibit 3).
4. The claimant appealed the Notice of Disqualification (Exhibit 4).
5. The claimant is currently separated from his wife. His wife is the mother of his two children.
6. The claimant owns a two family home with his wife.
7. The claimant lives in the same house with his wife and two children.
8. The claimant lives in the attic of the two family home. The claimant's wife and children live in another apartment in the two family home. The children are ages 13 and 17.
9. There are also a tenants in the two-family home.
10. The claimant and his wife both contribute to financial expenses of the home.
11. The claimant's wife works fulltime. The claimant does not know how much his wife earns in her job position.
12. The claimant works as an [Company A] and [Company B] driver. He works fulltime. He is paid as a 1099 worker in this job.
13. The claimant is not receiving unemployment benefits.
14. The claimant's family is not receiving government support.
15. The claimant used the now overpaid benefits to pay for bills.
16. The claimant did not give up any other benefits when initially approved for unemployment benefits.
17. The following is a list of the claim's income/assets:

<b><u>Income &amp; Assets</u></b>	
<u>Gross Monthly Income</u>	
Gross Income from [Company A] Driving and [Company B] Driving	\$2,000.00

Income from Tenants	\$900.00
<b><u>Total Monthly Income</u></b>	<b><u>\$2,900.00</u></b>
<b><u>Assets</u></b>	
Savings Account #1	\$60.00
Savings Account #2	\$208.00
Retirement Plan rolled over from 401K	\$39,944.20

18. The following is a list of the claimant's expenses/liabilities:

<b>Monthly Expenses</b>	
Support Provided to spouse for expenses of children, contribution to mortgage payment, and utilities	\$800.00
Food Cost for Self (\$70.00 per week x 4 weeks a month)	\$280.00
Clothing Costs for Self (\$800 per year/ 12 months per year)	\$67.00
Work Related Travel Costs (\$120 per week x 4 weeks per month)	\$480.00
Auto Insurance Premium	\$100.00
Motor Vehicle Payment 2016 Honda (Exhibit 7)	\$282.72
Chase Credit Card Minimum Monthly Payment (Exhibit 8)	\$237.00
Express Credit Card Minimum Monthly Payment (Exhibit 9)	\$55.00
Sears Credit Card Minimum Monthly Payment (Exhibit 10)	\$99.00

Home Depot Credit Card Minimum Monthly Payment (Exhibit 11)	\$195.00
Monthly Payment for Optional Hair Replacement Surgery done while working for previous employer	\$129.17
Water and Sewerage Payment	\$120.00
<b>Total Monthly Expenses</b>	<b>\$2,844.89</b>
<b>Outstanding Debt</b>	
Mortgage Principal joint -with Wife (Exhibit 6)	\$191,88.63
Car Loan Balance 2016 Honda (Exhibit 7)	\$19,029.00
Chase Credit Card Balance (Exhibit 8)	\$7,827.38
Express Credit Card Balance (Exhibit 9)	\$1,181.37
Sears Credit Card Balance (Exhibit 10).	\$1,907.85
Home Depot Credit Card Balance (Exhibit 11)	\$6,711.12
Balance of Optional Hair Transplant Surgery (Exhibit 12)	\$823.20

19. The claimant believes it is possible for him to repay the now overpaid benefits in a payment plan.

#### Ruling of the Board

In accordance with our statutory obligation, we review the 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 an overpayment waiver is free from error of law. Upon such review and as discussed more fully below, the Board adopts the review examiner's findings of fact except as follows. Finding of Fact # 18 is erroneous in its accounting of the claimant's *monthly* expenses for food and work-related travel. The claimant stated that his food costs were \$70 per week and that his travel costs were \$120 per week. These statements were credited by the review examiner in the same finding. However, in converting those from weekly to monthly expenses, the review examiner erroneously multiplied by four instead of 4 1/3 weeks

per month. As a result, in reality, the claimant's monthly food expenses are \$303.33, while his monthly travel expenses are \$520.00. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, contrary to the review examiner, we conclude that the totality of the findings and evidence in the record supports a waiver of recovery of the overpayment of benefits.

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.

Under G.L. c. 151A, § 69(c), if the claimant erroneously received unemployment benefits without fault, it is his 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 review examiner 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.

The regulations at 430 CMR 6.03 explain that recovery of an overpayment would be against equity and good conscience if "an overpaid claimant, by reason of the overpayment, relinquished a valuable right or changed his or her position for the worse." There is nothing in the record that suggests that the claimant relinquished a valuable right (such as a denial of any public benefits to which he otherwise would have been entitled) or that he changed his position for the worse (such as by entering into a long-term financial commitment) by originally accepting the benefits. Therefore, it cannot be concluded that recovery of the overpayment would be against equity and good conscience.

The regulations at 430 CMR 6.03 further explain that it would defeat the purposes of benefits otherwise authorized if "recovery of the overpayment would deprive the overpaid claimant, or individuals dependent on the claimant, of income required for ordinary and necessary living expenses." The review examiner concluded that this recovery of the overpayment would not defeat the purposes of benefits otherwise authorized by finding that the claimant's monthly income (\$2,900.00) exceeded his ordinary and necessary monthly living expenses (\$2,844.89) by \$55.11. However, as explained above, the review examiner erred in converting the claimant's weekly expenses for food and work-related travel to monthly amounts. As a result of that \$63.33 mathematical error, the claimant's weekly expenses are in fact \$2,908.22, tipping the ledger in the other direction. In addition, the review examiner erroneously used the claimant's gross monthly income in her calculations, evidently because the claimant's income comes from self-employment and rental income. The fact that the claimant does not have income taxes automatically deducted from his income does not mean that he is not subject to or does not pay income taxes quarterly or annually. As the review examiner failed to determine the amount of income taxes actually paid by the claimant, the claimant's net income cannot be accurately determined. However, this error

is yet another factor in our conclusion that the claimant's ordinary monthly expenses exceed his income.

We, therefore, conclude as a matter of law that recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized, although it would not be against equity and good conscience, pursuant to 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 \$14,578 in overpaid benefits.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - March 29, 2018**



Charlene A. Stawicki, Esq.  
Member

**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](http://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/th