

After remand, the consolidated findings of fact showed that the claimant's expenses exceeded her income since her employment contract had ended. She was, therefore, entitled to a waiver of the overpayment under G.L. c. 151A, § 69(c).

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Charlene A. Stawicki, Esq.
Member
Michael J. Albano
Member

Issue ID: 0031 2056 75

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

The claimant was overpaid benefits as the result of a hearing decision that disqualified her for benefits under G.L. c. 151A §§ 29(b) and 1(r)(1). She filed a request for a waiver of her obligation to repay the benefits. The DUA issued a determination denying the claimant's request for a waiver, finding that she was at fault for the overpayment. A review examiner at the DUA affirmed the determination in a decision rendered on August 30, 2019. The claimant appealed to the Board, and we remanded her case for a *de novo* hearing because several of the review examiner's findings of fact were not supported by substantial and credible evidence. In a September 26, 2019 hearing decision, another review examiner determined the claimant was not at fault for the overpayment. As the claimant was not at fault for the overpayment, we remanded the case for a *de novo* hearing on the claimant's entitlement to a waiver. Following a hearing pertaining to her entitlement to a waiver, the review examiner issued a decision dated December 5, 2019, affirming the agency's denial. We accepted the claimant's application for review.

The review examiner denied the waiver because she determined that the recovery of overpaid benefits in this case would not defeat the purpose of benefits otherwise authorized or be against equity and good conscience within the meaning of 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 more specific information regarding the claimant's income. The claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact. Our decision is based upon our review of the entire record following the most recent *de novo* order.

The issue before the Board is whether the review examiner's decision, which denied the claimant a waiver of the overpayment because her income exceeded her ordinary and necessary living expenses, 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 are set forth below in their entirety:

1. The claimant was overpaid benefits amounting to \$2,646.00 as the result of a hearing decision that disqualified the claimant from receiving unemployment benefits in accordance with Section 29(b) & 1(r)(1) of the Law.
2. On September 26, 2019, a hearing decision was rendered to the claimant stating her overpayment was determined to be non-fraud.
3. The claimant used the unemployment benefits she received, now determined to be overpaid, to pay her mortgage at the time and to pay her bills.
4. The claimant is not married and has one seven-year-old dependent child.
5. The claimant works part time as a contracted professor for a university. The claimant earns \$15,000.00 a semester.
6. As of the initial hearing date, December 5, 2019, the claimant's net earnings were \$1,717.36 bi-weekly.
7. The claimant receives \$532.00 a month is [sic] child support.
8. The claimant pays \$1,000.00 a month for rent, which includes heat, electric, water and trash pickup.
9. The claimant drives a 2016 Toyota RAV4, for which she pays a monthly amount of \$380.00. The claimant pays approximately \$250.00 monthly for gas. She pays car insurance in the amount of \$198.00 monthly. The claimant's repairs and other vehicle related expenses are approximately \$50.00 a month.
10. The claimant's monthly expenses include: clothing: \$50.00; food: \$400.00; cable and internet: \$40.00; and cell phone: \$80.00.
11. The claimant has MassHealth and does not pay a monthly rate. The claimant pays \$22.00 a month for dental insurance.
12. The claimant's total credit card debt is approximately \$16,800.00 and she attempts to make payments of \$144.00 per month.
13. The claimant has a checking account with a current balance of \$2,000.00.
14. On June 5, 2019, the claimant opened a new claim for unemployment benefits effective for June 2, 2019. The Department of Unemployment Assistance established her weekly benefits allowance as \$453.00, plus a \$25.00 dependency allowance; totaling \$478.00.

15. On December 9, 2019, the fall 2019 semester ended and the claimant worked her last day.
16. On December 14, 2019, the claimant reopened her existing unemployment benefits claim, effective for December 1, 2019.
17. The DUA deducts \$119 a week from the claimant's weekly benefits allowance.
18. As of January 23, 2020, the claimant received a gross weekly benefits allowance of \$359.00 from the DUA.

Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated 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 recovery of the overpayment would not defeat the purpose of benefits already authorized in accordance with G.L. c. 151A, § 69(c), and within the meaning of 430 CMR 6.03.

The claimant's eligibility for a waiver is governed by G. L. c. 151A, § 69(c), which provides, in relevant part, as follows:

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 received an overpayment of 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 would be against equity and good conscience. The phrase, "defeat the purpose of benefits otherwise authorized" is defined under the DUA regulation at 430 CMR 6.03 as meaning "recovery of the overpayment would deprive the overpaid claimant, or individuals dependent on the claimant, of income required for ordinary and necessary living expenses." Section 6.03 further defines ordinary and necessary living expenses as follows:

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.

The claimant had worked as an adjunct professor, earning \$1,717.36 bi-weekly. Consolidated Findings of Fact ## 5 and 6. However, her contract ended on December 9, 2019. Consolidated Finding of Fact # 15. As a result, the updated information in the consolidated findings show that the claimant's financial circumstances have changed substantially since the time of the initial hearing. *See* Consolidated Findings of Fact ## 6, 15, and 18. The claimant's ordinary and necessary living expenses are approximately \$2,160 per month. *See* Consolidated Findings of Fact ## 8, 9, and 10. Her current household income, consisting of unemployment insurance benefits and monthly child support payments, is \$1,968 per month. *See* Consolidated Findings of Fact ## 7, 14, and 18. Thus, the claimant's monthly household expenses exceed her monthly income by approximately \$200 a month.

Since the claimant's ordinary and necessary living expenses exceed her monthly household liquid income, we conclude as a matter of law that she has met her burden to show that recovery of the overpayment would defeat the purpose of benefits otherwise authorized within the meaning of G.L. c. 151A, § 69(c).

The review examiner's decision is reversed. Recovery of the remaining overpaid benefit balance is waived.

BOSTON, MASSACHUSETTS
DATE OF DECISION - February 11, 2020



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.

LSW/rh