

Since the claimant's net household income exceeds her monthly household expenses, she is not entitled to an overpayment waiver under G.L. c. 151A, § 69(c), as recovery of the overpaid benefits would not defeat the purpose of benefits otherwise authorized. Though SSDI benefits are issued to her minor son, the claimant is not presumptively eligible for a waiver under a plain reading of 430 CMR 6.05, because the SSDI benefits are not received by the claimant herself.

**Board of Review**  
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**Member**  
**Michael J. Albano**  
**Member**

**Issue ID: 0035 7386 70**

**\* CORRECTED 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 affirm.

The claimant was assessed an overpayment of \$3,451.00 pursuant to G.L. c. 151A, § 71. She applied for a waiver of recovery of the overpayment, which was denied by the agency in a determination issued on April 8, 2020. 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 August 1, 2020. 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 under G.L. c. 151A, § 69(c). 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 on appeal is whether the review examiner's decision, which concluded that recovery of the overpayment would not defeat the purpose of benefits otherwise authorized under G.L. c. 151A, § 69(c), is supported by substantial and credible evidence and is free from error of law, where the consolidated findings establish that the claimant's monthly net household income exceeds her necessary and ordinary living expenses.

Findings of Fact

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

1. On 02/08/19, the DUA Board of Review dismissed the claimant's appeal of a lower level decision denying the claimant benefits pursuant to Mass. Gen. Laws c. 151A, §§ 29(a), (b) & 1(r).
2. As a result, the claimant was overpaid in the amount of \$3,451.00.
3. On 03/30/20, the claimant filed a request for a waiver of the overpayment.
4. On 04/08/20, the DUA sent the claimant a Disqualification Notice under Section 69(c).
5. On 04/22/20, the claimant filed an appeal of the 04/08/20 Disqualification.
6. The claimant is single and lives with her four young children.
7. The claimant works part-time as a personal care assistant. She earns \$15.00 per hour and works 22 hours per week. Her gross weekly pay is \$330.00 and monthly pay is \$1,320.00 [sic].
8. The claimant also works part-time for a second employer where she earns \$12.75 an hour and works 7 hours per week. Her gross weekly pay from her second job is \$89.25 and monthly gross pay is \$357.00 [sic].
9. The claimant receives \$897.00 from Social Security on behalf of her son who has a medical disability.
10. The claimant also receives \$408 in food stamps each month.
11. The claimant receives \$500 per month for child support for one of her children.
12. The claimant has about \$30.00 in her personal bank account.
13. The claimant owns her home which has a value of approximately \$130,000. The claimant pays a \$724.00 per month mortgage payment.
14. The claimant pays an additional \$200 each month for food for her family. On a monthly basis, she also pays on average \$79.00 for gas; \$75.00 for solar power; \$58.00 for water; \$66.00 for electricity and \$104 for her phone bill. She additionally pays another \$200.00 for incidentals and clothing.
15. The claimant owns a 2015 Chevy Cruz valued at \$1900. She pays \$1000 per year (\$83/month) for her car insurance.

#### 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. After such review, the Board adopts the review examiner's findings of fact except as follows. In Findings ## 7 and 8, the review examiner miscalculated the claimant's monthly earnings by multiplying her weekly wages by four, rather than by 4.3<sup>1</sup>. Thus, the claimant's gross monthly pay from her first job is actually \$1,419.00 (*see* Finding # 7), and her gross monthly pay from her second job is \$384.00 (*see* Finding # 8). In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. For the reason set forth below, we sustain the review examiner's decision to deny the overpayment waiver at issue.

The claimant was denied a waiver under G.L. c. 151A, § 69, 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 at 430 CMR 6.03 further define the phrases "against equity and good conscience" and "defeat the purpose of benefits otherwise authorized," as follows:

Against Equity and Good Conscience means that recovery of an overpayment will be considered inequitable if an overpaid claimant, by reason of the overpayment, relinquished a valuable right or changed his or her position for the worse. In reaching such a decision, the overpaid claimant's financial circumstances are irrelevant.

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.

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<sup>1</sup> Dividing 52 weeks per year by 12 months equals 4.3 weeks per month.

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 would be against equity and good conscience. Here, there is nothing in the record to suggest that the claimant was at fault for the overpayment. However, the review 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, because the claimant's monthly income exceeds her ordinary and necessary living expenses.

First, 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.

We also agree with the review examiner's conclusion that denying the waiver would not defeat the purpose of benefits otherwise authorized. The totality of the evidence in the record shows that the claimant has a monthly gross household income of approximately \$2,711.00: \$1,419.00 from her first job, \$384.00 from her second job, \$408.00 in food stamps, and \$500.00 in child support.<sup>2</sup> *See* Findings of Fact ## 7–11.

By our calculation, the claimant's ordinary and necessary living expenses each month total \$1,997.00: \$724.00 for rent, \$608.00 for food, \$79.00 for gas, \$75.00 for solar power, \$58.00 for water, \$66.00 for electricity, \$104.00 for telephone, \$200.00 for clothing and other incidentals, and \$83.00 in automobile insurance.<sup>3</sup> *See* Findings of Fact ## 13–15.

The review examiner's findings omitted testimony from the claimant that she pays work-related travel costs of \$120.00 per month, as well as a line item in her Waiver Request Submission of \$100.00 in personal hygiene and household cleaning costs.<sup>4</sup> Even adding this \$220.00 to the claimant's household expenses, her monthly expenses of \$2,217.00 are still exceeded by her gross monthly income of \$2,711.00.

Since the claimant's gross monthly household income exceeds her total monthly household expenses, recovery of the overpaid benefits would not deprive the claimant of the income required for the ordinary and necessary living expenses of her household.

Finally, our analysis considered whether the claimant is presumptively entitled to a waiver because one of her minor sons receives SSDI payments. According to 430 CMR 6.05(3)(b)(2):

Waiver requests shall be granted or denied in accordance with the following example: (b) An overpaid claimant is found to be without fault as regards the

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<sup>2</sup> With regard to Finding of Fact # 9, we do not consider the \$897.00 in Social Security Disability Income (SSDI) benefits issued to the claimant's minor child to be part of the claimant's monthly household income, for reasons explained below.

<sup>3</sup> On appeal to the Board, the claimant complains she never told the review examiner she paid "\$75 for solar power or 83 [sic] for car insurance." However, our review of the record before us confirms that the review examiner adopted these figures from a document submitted by the claimant, as well as from the claimant's direct testimony that she pays \$500.00 every six months (\$83.00 monthly) for automobile insurance. *See* Exhibit 7, Appeal Case Folder S9, p. 6.

<sup>4</sup> *See* Exhibit 2, Appeal Case Folder S9, p. 18.

overpayment; and (2) Recovery would not be “against equity & good conscience”, but would “defeat the purpose of benefits otherwise authorized”. The request for waiver is granted. For the purpose of this provision, any claimant applying for a waiver who presents documentation of current receipt of Emergency Assistance to Elderly, Disabled and Children benefits, (EAEDC), Supplemental Security Income benefits (SSI) or Social Security Disability Insurance benefits (SSDI) combined with SSI shall be presumptively eligible for a waiver of overpayment pursuant to 430 CMR 6.05.

The question before the Board is whether disbursement of SSDI payments to an overpaid claimant’s minor child constitutes “current receipt” by the claimant to satisfy the requirement of 430 CMR 6.05. We conclude that the plain language of this regulation does not confer such a presumption and waiver, where such benefits are received by a family member rather than by the claimant herself.

We, therefore, conclude as a matter of law that recovery of the overpaid benefits would neither defeat the purpose of benefits otherwise authorized, nor be against equity and good conscience pursuant to G.L. c. 151A, § 69(c).

The review examiner’s decision is affirmed. The claimant’s request for waiver of recovery of overpaid benefits is denied. The claimant must repay to the DUA \$3,451.00 (or the remaining balance if different) in overpaid benefits. We note that the claimant may reapply for an overpayment waiver should her financial circumstances change in the future.



Paul T. Fitzgerald, Esq.  
Chairman

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - \* October 8, 2020**



Michael J. Albano  
Member

Member Charlene A. Stawicki, 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](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.

JPCA/rh