

**Board of Review  
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**Issue ID: 0068 7312 81**

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

The claimant was assessed an overpayment in the amount of \$9,292.00. She applied for a waiver of recovery of the overpayment, which was denied by the agency in a determination issued on June 29, 2021. The claimant appealed the determination 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 November 6, 2021. 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 hearing. 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 concluded that recovery of the overpayment would not 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, where the record after remand shows that the claimant's monthly expenses exceed her monthly income.

### Findings of Fact

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

1. On April 22, 2021, Hearing Results 0055 8571 28-02 were issued finding that the claimant was disqualified under MGL c. 151A, Section 25(e)(1), for the period beginning January 5, 2020, and until she worked for 8 weeks and earned an amount equal to or in excess of 8 times her weekly benefit amount. This resulted in a non-fraud overpayment of \$9,292, ID number 1527162.

2. The claimant spent the overpaid benefits supporting herself while in graduate school.
3. On June 29, 2021, DUA issued Notice of Disqualification 0068 7912 81-02, stating that under MGL c. 151A, section 69, DUA may not waive recovery of the present overpayment.
4. The claimant is single and lives alone. She has no dependents.
5. As of September 15, 2021, the claimant has been employed full-time as a contract employee in a public school. She is paid \$42 an hour. Her regular schedule is 35 hours a week. She is not paid for school holidays, vacation, professional days or sick days.
6. The employer's school holidays, vacation and professional days for 2021 were as follows:
  - a. August 31 – Professional Development Day
  - b. October 8 – Professional Development early dismissal – all grades
  - c. October 11 – Columbus Day
  - d. October 18 – Late entry Middle and High School
  - e. November 1 - Late entry Middle and High School
  - f. November 2 – Professional Development – all grades
  - g. November 11 – Veterans Day
  - h. November 24 – 11 a.m. dismissal
  - i. November 25 and 26 -Thanksgiving
  - j. December 6 – late start Middle and High School
  - k. December 23 – 11 a.m. dismissal
  - l. December 24 through 31 – Winter Vacation
7. The claimant took one sick day in 2021.
8. As of October 4, 2021, the claimant had \$6,458.60 in a checking account and \$825.86 in a savings account, for a total of \$7,284.46.
9. The [claimant's] father allows her to use a car that is registered in his name.
10. The claimant has \$148,331 in FAFSA loans; payment on these loans has been deferred by President Biden until May, 2022. The loans break down as follows:
  - a. Direct Stafford unsubsidized loans totaling \$64,162, with \$226 in outstanding interest;
  - b. Direct Plus Graduate loans totally [sic] \$70.348, with \$206 in outstanding interest;
  - c. Direct Stafford Subsidized loans (SULA eligible) totaling \$13,368, with \$21 in outstanding interest.

11. The claimant also has three student loans with First Mark, which her father co-signed:
  - a. \$10,000 loan, disbursed on August 12, 2013, with a principal balance of \$13,484.49;
  - b. \$13,808 loan, disbursed on August 17, 2015, with a principal balance of \$17,883.34;
  - c. \$11,000 loan, disbursed on August 20, 2014, with a principal balance of \$14,417.39.
12. The 3 First Mark loans (presently totaling \$45,817.52) are being repaid with one monthly payment of \$419.84 a month.
13. On September 10, 2021, the claimant signed a lease (starting September 17, 2021, and terminating on August 31, 2022) for a 5 room, 2-bedroom apartment starting [sic]. The monthly rent is \$1,675. The lease assumes one tenant and stated that any additional tenant [is] subject to owner's approval and additional cost.
14. The claimant's monthly cable/internet bill is \$128.94. She has a Standard+ package, which includes Limited Basic and Expanded Basic (Kids & Family, Entertainment, Sports & News) HD, 20 hours of DVR Service, and Performance Pro Internet.
15. The claimant's monthly electric bill for October, 2021 was \$37.65 and for November, 2021 it was \$39.73.
16. The claimant's monthly gas bill for October, 2021 was \$32.55 and for November, 2021 it was \$112.65.
17. The claimant has a cell phone line through her parent's cell phone plan. She pays her father \$40 a month to participate in this plan.
18. The claimant's monthly expense for food is approximately \$400.
19. The claimant's monthly expense for clothing is approximately \$150.
20. The claimant pays \$140 for annual city parking passes. This comes to approximately \$12 a month.
21. The claimant pays approximately \$60 a month for gas to drive to work.
22. The claimant's annual co-payments for regularly scheduled medical appointments comes to approximately \$265. This comes to approximately \$22 a month.

23. The [claimant's] expenses for necessary incidentals, like shampoo and dish detergent, comes to approximately \$100 a month.
24. The [claimant's] October 1, 2021, paycheck was for 57 hours of work. The gross pay was \$2,250. The tax deductions were as follows:
  - i. Federal \$231.89
  - ii. Social Security \$141.36
  - iii. Medicare \$ 33.06
  - iv. MA State \$105.20.
  - v. MA family/Medical leave \$ 8.62
25. The claimant's November 26, 2021, paycheck was for 69.50 hours of work. The gross pay was \$2,919. The tax deductions were as follows:
  - i. Federal \$372.47
  - ii. Social Security \$180.98
  - iii. Medicare \$ 42.33
  - iv. State taxes \$ 134.78
  - v. MA family leave \$ 11.03
26. The claimant's December 10, 2021, paycheck was for 50.50 hours of work. The gross pay was \$2,121. The tax deductions were as follows:
  - i. Federal \$196.91
  - ii. Social Security \$131.50
  - iii. Medicare \$ 30.75
  - iv. State \$ 97.94
  - v. MA family/Medical leave \$ 8.02
27. The claimant's December 24, 2021 paycheck [was] for 71.00 hours of work. The gross pay was \$2,982. The tax deductions were as follows:
  - i. Federal \$386.33
  - ii. Social Security \$184.88
  - iii. Medicare \$ 43.24
  - iv. State \$137.69
  - v. MA family/Medical leave \$ 11.27
28. Between September 15, 2021, and December 24, 2021, the claimant had \$18,513 in regular pay. The year to date withholding taxes on these wages were as follows:
  - i. Federal \$2,184.89
  - ii. Social Security \$1,154.87
  - iii. Medicare \$ 270.09
  - iv. MA State \$ 860.09

- v. MA family/Medical leave \$ 70.40
- 29. The claimant pays \$592 a month for health insurance.
- 30. The claimant's father pays \$2,271 a year for car insurance on two cars, including the one which the claimant uses. The claimant pays her father \$232.10 a month towards the insurance on this car.
- 31. The claimant has one credit card which, as of October 14, 2021, had a balance of \$8,916.75. The minimum payment on this balance is \$259. The September 14, 2021, to October 14, 2021, charges included, in part, the following charges for items that are not ordinary and necessary:
  - a. \$235.65 for Peloton fitness program
  - b. \$72 at beauty salons
  - c. \$161 at a wine, beer and/or spirits store.
  - d. \$15.99 for Spotify
  - e. \$19.99 for Netflix
  - f. \$230+ at 4 restaurants.
- 32. The claimant also had over \$700 in charges at grocery stores and/or convenience stores over the one-month period of September 14, 2021, to October 14, 2021:
  - a. \$40.73 Cumberland farms
  - b. \$388.22 Stop and Shop
  - c. \$172.77 Trader Joes
  - d. \$44.26 Trader Joes
  - e. \$44.26 Trader Joes
  - f. Market Basket \$16.64
  - g. Trader Joes \$20.21
  - h. Whole Foods \$24.19

### Ruling of the Board

In accordance with our statutory obligation, we review the record and 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 except as follows. We set aside the portion of Consolidated Finding # 21 which states that the claimant spends \$60.00 per month on gas, as the claimant testified that she spends \$60.00 per week, and this amounts to a monthly expense of \$258.00 (60 x 4.3).<sup>1</sup> In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as

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<sup>1</sup> We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. 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).

discussed more fully below, we conclude that the totality of the findings and evidence in the record support a reversal of the decision to deny the overpayment waiver.

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 review examiner concluded 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, because the claimant’s monthly income exceeds her monthly expenses. The review examiner arrived at this conclusion based on the limited documentation presented by the claimant pertaining to her financial circumstances.

After we remanded the case to obtain additional evidence, the claimant provided updated and thorough documentation pertaining to her monthly income and expenses. Specifically, the claimant submitted several paystubs, including her two most recent paystubs prior to the January 3, 2022, remand hearing. Remand Exhibit # 12, the claimant’s paystub dated December 10, 2021, with a pay period of November 20, 2021, to December 3, 2021, shows net pay of \$1,655.88. *See* Consolidated Finding # 26. Remand Exhibit # 18, the claimant’s paystub dated December 24,

2021, with a pay period of December 4, 2021, to December 17, 2021, shows net pay of \$2,218.59. *See Consolidated Finding # 27.* The claimant explained that because she is a contract employee, she is not paid for school holidays, vacation time, professional days or sick days, and this accounts for the fluctuations in her pay. *See Consolidated Finding # 5.* Given these fluctuations to the claimant's pay, we must calculate the claimant's average monthly income after taxes in order to determine whether she has the financial means to repay the overpayment amount.

The claimant's final paystub of 2021, which is dated December 24, 2021, does not include a year-to-date amount of her net pay, but it shows a gross year-to-date total pay amount of \$18,627.00 and \$4,540.34 in taxes, with no other deductions.<sup>2</sup> Based on these two figures, we can calculate that the claimant received net pay in the amount of \$14,086.66 between her employment start date of September 8, 2021, and December 17, 2021, and this yields an average monthly income after taxes of \$4,230.00. Because the consolidated findings establish that the claimant's monthly expenses total \$4,441.00, we conclude that recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized, as the claimant's monthly expenses exceed her monthly income after taxes.

Although we have determined that the claimant is entitled to an overpayment waiver because recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized, we will nonetheless consider whether a waiver may also be appropriate on the ground that recovery of the overpaid benefits would be against equity and good conscience. The review examiner here found that the claimant spent the overpaid benefits supporting herself while she was in graduate school. *See Consolidated Finding # 2.* Because there is no indication in the record that the claimant's receipt of the overpaid benefits caused her to relinquish a valuable right or change her position for the worse, we conclude that recovery of the overpaid benefits would not be against equity and good conscience. 430 CMR 6.03.<sup>3</sup>

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).

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<sup>2</sup> The total pay amount in the claimant's check dated December 24, 2021, 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).

<sup>3</sup> The DUA just promulgated a new Emergency Regulation 430 CMR 6.16 - Special Relief for Pandemic Overpayments, which took effect on April 14, 2022. Because our decision allows a waiver under the regulations in effect prior to this date, we need not consider whether she would otherwise qualify for a waiver under the new regulation.

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 \$9,292.00 in overpaid benefits.



**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - April 28, 2022**

Charlene A. Stawicki, Esq.  
Member



Michael J. Albano  
Member

Chairman Paul T. Fitzgerald, 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.

SVL/rh

**The claimant is entitled to an overpayment waiver under G.L. c. 151A, § 69(c), because recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized, as the claimant's monthly expenses exceed her monthly income after taxes.**