

The claimant was found not to be at fault for several overpayments. As her expenses exceeded her income, recovery of the overpayments would defeat the purpose of the benefits otherwise authorized. Therefore, the claimant is entitled to a waiver of these overpayments pursuant to G.L. c. 151A, § 69(c).

**Board of Review
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Issue ID: 0072 6600 13

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 requested a waiver of recovery of overpaid benefits, which was denied in a determination issued on September 7, 2021. 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 December 14, 2021. We accepted the claimant's application for review.

The review examiner denied the claimant a waiver of the overpayments on the grounds that the DUA had determined the claimant was at fault for the overpayments, and, thus, she 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, while recovery of the overpayment would not defeat the purpose of benefits otherwise authorized, the claimant had been found to be at fault for the overpayment and therefore was not eligible for a waiver under 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 findings of fact are set forth below in their entirety:

1. Since 2014 the claimant has had 19 overpayments four of which had findings of Fault/Fraud by the claimant causing the overpayments.
2. On 09/07/21, the claimant filed an application for waiver to waive more than \$20,000.00 in overpaid benefits involving Fault/Fraud by the claimant.

3. On 09/07/21, the claimant's waiver application was denied because the overpayments were due to Fault/Fraud by the claimant (not reporting earnings properly).
4. There is no evidence that the Fault/Fraud findings were reversed and are no longer in force.
5. The claimant is unemployed and or underemployed and she provided evidence that she has debts and expenses that far exceed her income and she currently is not able to meet her household expenses.

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 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 findings of fact except as follows. We reject Finding of Fact # 4, as the DUA's electronic record-keeping system, UI Online, shows that the Fraud/Fault findings with regard to the overpayments in question were overturned. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner's legal conclusion that the claimant was not entitled to an overpayment waiver.

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.

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.

The review examiner found the claimant ineligible for a waiver of the overpayments because the DUA had determined she was at fault for creating the overpayments in question. Findings of Fact ## 3 and 4. However, the claimant maintained both at the hearing and on appeal that such a finding had been reversed. We take administrative notice of the claimant's overpayment history, which is contained within the DUA's UI Online system. These records confirm that the claimant was found not to be at fault for the overpayments in question. Accordingly, we reject Finding of Fact # 4 as unsupported, and conclude that the review examiner erred in denying the claimant's request for a waiver on this ground.

The claimant provided evidence demonstrating that her debt and expenses exceeded her income. Finding of Fact # 5. Accordingly, we believe that the claimant met her burden to show that recovery of the overpayments in question would defeat the purpose of the benefits otherwise authorized within the meaning of 430 CMR 6.03.

We, therefore, conclude as a matter of law that recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized 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 \$19,294.34 in overpaid benefits.



Paul T. Fitzgerald, Esq.
Chairman

BOSTON, MASSACHUSETTS
DATE OF DECISION - May 27, 2022



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
(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