

Where the claimant was able to show in a separate case that her overpaid benefits were not due to her fault, and she has now shown that her necessary and ordinary living expenses exceed her monthly net income, she is entitled to a waiver of the remaining overpaid benefits pursuant to G.L. c. 151A, § 69(c).

**Board of Review
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Issue ID: 0075 4499 82

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

The claimant filed a claim for benefits, effective January 12, 2020, and was initially awarded benefits. However, the DUA subsequently determined that these benefits were overpaid (overpayment determination). She applied for a waiver of recovery of the overpayment, which the DUA denied in a determination issued on February 15, 2022 (waiver determination). The claimant appealed the waiver determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's waiver determination and denied the claimant's request for an overpayment waiver in a decision rendered on October 15, 2022. We accepted the claimant's application for review.

The overpayment waiver was denied after the review examiner concluded that the claimant was not eligible for a waiver under G.L. c. 151A, § 69(c), because the agency had concluded that the claimant was at fault for the overpayment. 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 consider a hearing decision overturning the DUA's fault determination and to obtain additional evidence clarifying the claimant's net income and expenses. The claimant attended the remand hearing, and, 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 to deny an overpayment waiver is supported by substantial and credible evidence and is free from error of law, where the consolidated findings now show that, in a separate hearing, the DUA's fault determination was reversed, and that the claimant's monthly expenses exceed her net income.

Findings of Fact

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

1. The claimant filed a claim for Unemployment Insurance (UI) with an effective date of January 12, 2020.
2. In a Notice of Disqualification dated February 15, 2022, the claimant was notified of an overpayment on her UI claim. The DUA determined the overpayment resulted from the claimant's failure to give information which they knew or should have known was material to the decision to grant their unemployment benefits. This determination renders an at fault determination.
3. The fault finding on the overpayment at issue was reversed on October 1, 2022.
4. The claimant appealed the determination of overpayment for the following overpayment ID#: 1227601 [sic] which was found to be at fault.
5. The claimant spent her UI benefits, which have now been determined to be overpaid, on her car note, car insurance, and household expenses such as clothes and food.
6. The claimant does not receive government assistance.
7. The claimant did not give up any benefits or right to benefits while receiving overpaid unemployment benefits.
8. The claimant lives alone and does not receive financial support from anyone else. Her child is an adult and living independently of the claimant's financial assistance.
9. The claimant has two jobs. She has had one of her full-time jobs for the last 29 years in the direct care field. She secured her second full-time job in March 2020. The claimant's full-time position is with the [Employer A] and a part-time [sic] position at a childcare facility. In order to meet her monthly financial responsibilities, the claimant often works overtime hours at her places of employment to supplement her regular hourly pay. Therefore, there is some fluctuation in her income. The claimant's total average monthly net income from her two sources of employment is approximately \$3,902.
10. The claimant has a 2008 and 2011 vehicle. One is driven by the claimant and another by her daughter when she is home from college. Therefore, the auto insurance premium fluctuates depending on the time of year.
11. The claimant's Checking account balance as of November 28, 2022, is \$700. The claimant's Savings account balance as of November 25, 2022, is \$6,097.46.
12. The claimant pays \$695 toward her monthly credit card debt (not including recent large lump sum payments for purchases such as items for her home and the like) and \$200 toward her monthly medical debt.

13. The claimant's property taxes are not included her monthly mortgage payments. Her property taxes are \$276.96 monthly.
14. The claimant pays \$43.32 in monthly prescription costs.
15. The claimant pays \$120.53 per month for her cell phone bill.
16. The claimant's electric and gas monthly bills fluctuate between the four seasons. Winter (December thru Feb) \$275.00-gas, \$60.00-electric. Spring (March thru May) gas-\$110, \$85.00-electric. Summer (June to September)-\$100.00-gas, \$85.00- electric. Fall (September to November) \$100.00-gas, \$85.00-electric. The claimant's average monthly gas bill is \$146.25. The claimant's average monthly electric bill is \$78.75.
17. The following are approximate averages of the claimant's monthly bills for trash, water, and sewer services: The claimant pays an average of \$ 77.71 monthly for water services (based on 2020-2022 quarterly payments). The claimant pays an average of \$35.11 (\$105.32 quarterly) monthly for sewer services. The claimant pays \$25 monthly for trash removal.
18. The claimant pays \$26.08 each month for Long Term Disability Insurance as a payroll deduction. She pays \$30 per month for Short Term Disability though a third party.
19. The claimant receives dental and vision benefits via her biweekly payroll deductions from her full-time position with the [Employer A] (\$88.85) or via her Union dues (\$23.26)
20. The claimant's monthly life insurance is paid quarterly at a rate of \$166 per month.
21. The claimant's additional monthly household costs and expenses plus the above are approximately:

Mortgage	\$ 1,178.00
Vehicle Insurance	\$ 273.12
(When only claimant drives: Sept- October; Feb-May)	
Vehicle Insurance	\$ 474.42
(When claimant's daughter drives: Jun-Aug; Nov-Jan)	
Gasoline	\$ 300.00
Cable	\$ 152.65
Food	\$ 250.00
Clothing	\$ 200.00
<u>Above Listed Expenses</u>	<u>\$ 1,943.97</u>
TOTAL	\$ 4,772.16

22. \$4,772.16 does not factor recent bills which will not be due every month once paid in full, *i.e.* dental bills, items purchased for her home. She will pay those outstanding debts with income from her two jobs.

Credibility Assessment:

The claimant's testimony and documents are found to be credible. The claimant provided consistent, detailed, and forthcoming testimony at both the original hearing and the remand hearing. There is nothing in the record to suggest that any of the claimant's testimony was not credible.

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 note errors in the list of expenses in Consolidated Finding # 21, which are discussed below. In adopting the remaining findings, we deem them to be supported by substantial and credible evidence. We further believe that the review examiner's credibility assessment is reasonable in relation to the evidence presented. However, based upon the record after remand, we reject the review examiner's legal conclusion that the claimant is not entitled to an overpayment waiver.

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.

In her original decision, the review examiner denied a waiver based upon an earlier DUA determination that the overpayment was due to the claimant's fault. She had not realized that this fault determination had been reversed on October 1, 2022, after a hearing in a separate case (Issue ID # 0047 7306 04). Consolidated Finding # 3 now acknowledges that decision.

We turn next to whether the claimant has established that she is otherwise eligible for a waiver because the recovery of the overpaid benefits would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. We agree that, because the claimant had not relinquished a valuable right based upon her receipt of benefits, the recovery of the overpayment would not be against equity and good conscience. *See* 430 CMR 6.03.

The phrase, "defeat the purpose of benefits otherwise authorized" is defined under the DUA regulation at 430 CMR 6.03, which provides 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.

Consolidated Finding # 9 provides that the claimant has an average monthly net income of \$3,902.00 from two full-time jobs. The remaining consolidated findings list her ordinary and necessary monthly living expenses.

Although the review examiner included the claimant's mortgage and property tax expenses, we note that she omitted the claimant's monthly homeowner's insurance payment of \$61.67 per month.¹ *See* Consolidated Finding # 13. It also appears that in tallying up total expenses in Consolidated Finding # 21, the review examiner counted the claimant's monthly auto insurance payments incorrectly. As we understand the claimant's testimony, she pays \$474.42 for six months and \$273.12 for six months, which averages to \$373.77 per month over the course of a year.²

With these two corrections, we calculate the claimant's total monthly necessary and ordinary living expenses to be \$4,505.59. Inasmuch as \$4,505.59 exceeds her net monthly income of \$3,902.00, the claimant has shown that recovery of an overpayment would defeat the purpose of benefits otherwise authorized, as meant under 430 CMR 6.03.

We, therefore, conclude as a matter of law that the claimant has met her burden to show that she is entitled to a waiver of overpaid benefits pursuant to G.L. c. 151A, § 69(c).

¹ With the claimant's Board of Review appeal, she included a copy of her homeowner insurance bill. *See* Remand Exhibit 2. 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).

² This portion of the claimant's testimony is also part of the record and remained consistent throughout the hearing.

The review examiner's decision is reversed. Recovery of any remaining overpaid benefits balance is waived.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 21, 2023



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
(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.

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