

**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 income, she is entitled to a waiver of the remaining overpaid benefits pursuant to G.L. c. 151A, § 69(c).**

**Board of Review  
100 Cambridge Street, Suite 400  
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: 0075 6562 58**

### 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 September 27, 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 March 1, 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 determined that the claimant was at fault for the overpayment. 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. The claimant filed a claim for Unemployment Insurance (UI) from the Department of Unemployment Assistance (DUA) benefits [sic] effective 9/27/2020.

2. In a Notice of Disqualification dated 3/01/2022, the claimant was notified of an overpayment on his 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 claimant appealed the determination of overpayment for the following overpayment ID's: 1673820, and 1673821 both of which were found to be at fault.
4. The claimant is married with three minor children. The claimant and their husband own a home.
5. The claimant spent their UI benefits, which have now been determined to be overpaid, on expenses such as household expenses and private school for their children.
6. The claimant has a full-time position for a production company as a cleaner. The claimant's husband works for the same company. The claimant and their husband each earn \$2,200 each month (\$4400 total).
7. The claimant received SNAP benefits thru March 2022. The claimant has not re-certified for additional benefits now that they and their husband are both working full-time.
8. The claimant receives government funded health benefits (medical, dental, and vision).
9. The claimant and their spouse each have a vehicle. One of the vehicles is paid off since 2018 and the other has a monthly payment of \$943.
10. The claimant does not have a joint bank account with their husband and does not know the balance of their husband's checking account as of their 10/06/2022 hearing. The claimant's checking account as of their 10/06/2022 hearing is \$200. The claimant's savings account as of their 10/06/2022 hearing is \$1,000. The claimant's 401K as of their 10/06/2022 has an approximate balance of \$1,000.
11. The claimant has approximately \$55,000 in outstanding credit card debt and tuition for their children's private school.
12. The claimant's monthly household costs and expenses as of this 10/04/2022, hearing are approximately:

Mortgage	\$ 1926.00
Utilities	\$ 650.00

Vehicle Payments	\$ 943.00
Vehicle Insurance	\$ 1600.00
Health Insurance	\$ 804.00
Life Insurance	\$ 1200.00
Gasoline/work related travel	\$ 400.00
Medical	\$ 800.00
Tuition	\$ 550.00
Credit Card	\$ 100.00
Cellphone	\$ 100.00
Food	\$ 900.00
Personal Hygiene etc.	\$ 200.00
<u>Clothing</u>	<u>\$ 350.00</u>
TOTAL	\$ 10,523.00

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 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 # 3, as the DUA’s electronic record-keeping system, UI Online, shows that the Fraud/Fault findings regarding 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’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 (Issue ID # 0072 3936 61) that the overpayment was due to the claimant’s fault (fault determination). However, an appeal of the fault determination was pending at the time the review examiner issued her decision on the waiver determination. As the fault determination had not become final at the time the review examiner issued her decision on the waiver determination, the Board was unable to complete its review of the claimant’s appeal.

The DUA’s UI Online system now shows that a decision in Issue ID # 0072 3936 61 was issued on April 15, 2023. In that decision, which has become final, the review examiner concluded that the claimant was found not to be at fault for the two overpayments at issue in this case. Accordingly, we reject Finding of Fact # 3 as unsupported and conclude that the review examiner erred in denying the claimant’s request for a waiver on this ground.

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. 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.

There is no indication that the claimant relinquished a valuable right based upon her receipt of benefits. Accordingly, the recovery of the overpayment would not be against equity and good conscience. *See* 430 CMR 6.03.

However, the findings of fact in this case show that the claimant’s debts and expenses exceed her income. Findings of Fact ## 6 and 12.<sup>1</sup> Accordingly, the claimant has 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.

---

<sup>1</sup> Generally, evidence of a claimant’s net income is necessary to determine whether waiving an overpayment would defeat the purpose of the benefits otherwise authorized. While findings of fact in this case only contain information about the claimant’s gross monthly income, we do not believe a remand is necessary. The findings of fact are sufficient for the Board to conclude that the claimant’s monthly expenses exceed her net income.

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.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - May 16, 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](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.

LSW/rh