

Because the DUA had not determined the claimant to be at fault for her overpayment on a long pending fault issue, the review examiner erred in denying the claimant a waiver on the grounds that she was found to be at fault. The claimant's monthly household expenses exceed her household's monthly income. Held recovery of the overpayment would defeat the purpose of the benefits otherwise authorized and the claimant is entitled to a waiver under G.L. c. 151A, § 69(c), if otherwise eligible.

**Board of Review
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Issue ID: 0079 2492 67

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 unemployment benefits with the DUA, effective March 15, 2020, and was initially awarded benefits. However, the DUA subsequently determined that these benefits were overpaid in a determination issued on November 6, 2020. She applied for a waiver of recovery of the overpayment, which the DUA denied in a determination issued on February 11, 2023. The claimant appealed 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 April 4, 2023. 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. 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 before the Board is whether the review examiner's decision to deny an overpayment waiver due to fault 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) benefits having an effective date of 3/15/2020 with the Department of Unemployment Assistance (DUA).

2. The claimant requested an overpayment waiver for overpayment ID # 1304152. The DUA determined these overpayments were due to fault [sic].
3. The DUA issued a Notice of Disqualification (Notice) to the claimant on 2/11/2023. The Notice informed the claimant that the request to waive recovery of overpaid benefits is denied, and that the claimant is not entitled to reapply for a waiver pertaining to this overpayment. The claimant appealed the Notice.
4. The claimant used the UI benefits, which have now been determined to be overpaid, to pay her living and household expenses.
5. The claimant did not relinquish the receipt of any other public assistance benefits to receive the UI benefits which have resulted in the overpayment.
6. The claimant is married and has a dependent seventeen-year-old daughter. The claimant's husband shares in the monthly household expenses.
7. The claimant is employed at a dance studio where she has worked for approximately 23 years as an instructor and studio manager and has a schedule of approximately twenty-five hours per week at \$30 per hour, earning gross wages of approximately \$3,000 per month and net wages of approximately \$1,688 after withholding deductions. The claimant also works two Saturdays per month as an esthetician earning approximately \$482 net income per month including tips. The claimant's combined monthly net income is approximately \$2,170.
8. The claimant's husband is employed by an airline in customer service and earns a gross salary of approximately \$5,713 per month, with a net monthly salary of approximately \$4,180 after withholding deductions.
9. The claimant has a checking account with a balance of approximately \$665 and a savings account with a balance of approximately \$1,400.
10. The claimant has a 2020 KIA Seltos valued at approximately \$22,000 with a monthly loan payment of \$345 for the next three years. The claimant's household has a second vehicle with a monthly loan payment of \$257.
11. The claimant does not have any outstanding debt for which she is not making monthly payments.
12. The claimant and her family own the home where they have lived for approximately twenty years.
13. The claimant's monthly expenses are approximately as follows:

Mortgage	\$1,398.00
Electricity	125.00

Gas	200.00
Water & Sewer	166.00
Homeowner Insurance	200.00
Internet, Phone, & Cable	209.00
Clothing	100.00
Food and Groceries	400.00
Cell phone	274.00
Vehicle Payment	602.00
Vehicle Insurance	274.00
Vehicle Fuel	300.00
Healthcare Expense	1,399.00
Prescription Expense	30.00
Medical Bills (\$580)	5.00
Credit cards (balance \$6,900)	350.00
Personal Loans (\$18,500)	230.00
TOTAL	<u>\$6,262.00</u>

14. The claimant appealed the DUA's determination.

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 note omissions from the list of expenses in Finding of Fact # 13, which are discussed below. 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 is not entitled to a waiver of the overpayment at issue.

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 his original decision, the review examiner denied the claimant a waiver of the overpayment at issue because the DUA had determined the overpayment was due to the claimant's fault. However, a review of UI Online, the DUA's electronic recordkeeping system, confirms that the DUA has not issued a determination finding that the claimant was at fault for the overpayment at issue in this case.¹ As the claimant has not been found to be at fault for the overpayment, the review examiner erred in denying the claimant's application for a waiver on those grounds.

¹ After determining that the claimant had been overpaid, the DUA opened Issue ID # 0057 4153 71 to adjudicate the issue of whether the claimant was at fault for the overpayment. That issue remains pending adjudication.

Accordingly, we next consider whether the claimant has established that she is otherwise eligible for a waiver because the recovery of the overpaid benefits would either defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. The claimant had not relinquished a valuable right based upon her receipt of unemployment insurance benefits during the period at issue. Finding of Fact # 5. Therefore, 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.

Although the review examiner enumerated the vast majority of the claimant’s expenses in Finding of Fact # 13, he omitted evidence of the claimant’s property tax expenses and other miscellaneous monthly expenses. Evidence of these expenses is included in the claimant’s Waiver Request Submission, which was admitted into evidence as Exhibit 5. As we understand the evidence presented by the claimant, she and her husband pay property taxes on their home amounting to \$483.00 per month, and their other miscellaneous expenses not otherwise accounted for in Finding of Fact # 13 amount to \$225.00 per month.²

With these two corrections, we calculate the claimant’s total monthly necessary and ordinary living expenses to be \$6,970.00. Inasmuch as this amount exceeds her household’s net monthly income of \$6,350.00, the claimant has shown that recovery of an overpayment would defeat the purpose of benefits otherwise authorized, as meant under 430 CMR 6.03. *See* Findings of Fact ## 7, 8, and 13.

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).

² Exhibit 5 is part of the unchallenged evidence introduced at the hearing and placed into 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).

The review examiner's decision is reversed. Recovery of any remaining overpaid benefits balance is waived, if the claimant is otherwise eligible.

BOSTON, MASSACHUSETTS
DATE OF DECISION - April 26, 2024



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.

LSW/rh