

**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: 0081 4161 17**

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 waiver of an overpayment. We review, pursuant to our authority under G.L. c. 151A, § 41, and affirm.

On November 4, 2023, the agency initially determined that the claimant was not entitled to a waiver of overpaid benefits. The claimant appealed and attended the hearing. In a decision rendered on December 13, 2023, the review examiner affirmed the agency determination, concluding that recovery of the overpayment made to the claimant shall not be waived under G.L. c. 151A, § 69(c), and 430 CMR 6.00-6.15. The Board accepted the claimant's application for review.

Ruling of the Board

After considering the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal, we conclude that the review examiner's decision to deny waiver of the overpayment is based on substantial evidence and is free from any error of law affecting substantive rights. However, we note that the review examiner committed a harmless error when basing her decision to deny the waiver on the question of whether recovery of the overpayment would be "against equity and good conscience" or "defeat the purpose of benefits otherwise authorized." 430 CMR 6.05(3)(b). Because the DUA found that the overpayment was due to fault on the part of the claimant, pursuant to 430 CMR 6.05(3)(a), the claimant is not entitled to a waiver, even if recovery of the overpayment would be against "equity and good conscience" or would "defeat the purpose of benefits otherwise authorized." This is so because, when there is fault, the waiver is automatically denied, regardless of the claimant's financial circumstances.

The review examiner's decision is affirmed. The claimant is not entitled to waiver of the overpaid benefits.

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - January 30, 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](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