

Although originally determined to be at fault, the claimant was subsequently determined not to be at fault for the overpayment. As his monthly expenses exceeded his monthly income, recovery of the overpayment 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: 0082 4563 90

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 a waiver of recovery 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 November 12, 2023, and was initially awarded benefits. However, the DUA subsequently determined that these benefits were overpaid (overpayment determination). He applied for a waiver of recovery of the overpayment, which the DUA denied in a determination issued on March 24, 2024 (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 May 9, 2024. 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 DUA had concluded that the claimant was at fault for the overpayment.

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 record now shows that, in a separate hearing, the DUA's fault determination was reversed, and that the claimant's monthly expenses exceed his net income.

Findings of Fact

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

1. The claimant submitted a Waiver Request Submission form to the Department of Unemployment Assistance (hereinafter DUA) in connection with now overpaid unemployment benefits.

2. The now overpaid unemployment benefits were previously determined by the DUA to have resulted due to fraud/fault on the part of the claimant.
3. The claimant's current monthly expenses are more than the claimant's current monthly income.
4. On March 25, 2024, the DUA issued a Notice of Disqualification, Issue Identification Number 0082 4563 90, denying the claimant's request for a waiver for the now overpaid benefits under Section 69(c) of the Law. On the Notice of Disqualification, the DUA wrote in part: "The overpayment resulted from your failure to give information which you know, or should have known was material to the decision to grant your unemployment benefits." In response to the Notice of Disqualification, the claimant appealed.

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 findings of fact except as follows. We reject Finding of Fact # 2, as the DUA's electronic record-keeping system, UI Online, shows that the Fraud/Fault determination 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 his original decision, the review examiner denied a waiver based upon an earlier DUA determination (Issue ID # 0082 3001 71) that the overpayment was due to the claimant's fault (fault determination). However, an appeal of the fault determination was pending at the time that the review examiner issued her decision on the waiver determination.

The DUA's UI Online system now shows that a decision in Issue ID # 0082 3001 71 was issued on July 8, 2024. In that decision, which has become final, the review examiner concluded that the claimant was found not to be at fault for the overpayments at issue in this case. Accordingly, we reject Finding of Fact # 2 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 he 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 his 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 his 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 monthly expenses exceed his monthly income. Finding of Fact # 3. Accordingly, the claimant has met his 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.

BOSTON, MASSACHUSETTS
DATE OF DECISION - October 28, 2024



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. 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.

MM/rh