

Review examiner incorrectly found the claimant was earning \$32/hour instead of \$25/hour, and only obtained information about the claimant's wife's gross income. Calculating the claimant's net earnings using his paystubs shows that his household income, even when using his wife's earnings, is insufficient to meet his monthly expenses. The claimant is entitled to a waiver of the overpayment under G.L. c. 151A, § 69(c).

**Board of Review
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Issue ID: 0084 4999 34

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 May 7, 2023, and was initially awarded benefits. However, the DUA subsequently determined that these benefits were overpaid in a determination issued on October 6, 2023. He applied for a waiver of recovery of the overpayment, which the DUA denied in a determination issued on January 10, 2025. The claimant appealed the 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 February 8, 2025. We accepted the claimant's application for review.

The overpayment waiver was denied after the review examiner concluded that the recovery of overpaid benefits would not defeat the purpose of benefits otherwise authorized within the meaning of G.L. c. 151A, § 69(c). 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, which concluded that the claimant was not entitled to a waiver of the overpayment at issue because his income exceeded his ordinary and necessary living expenses, 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 applied for unemployment benefits and was determined to have a benefit year beginning May 28, 2023.

2. On October 6, 2023, the DUA sent the claimant a Notice of Disqualification under Section 25(e)(2) of the Law that found him overpaid in the amount of \$5,150. The claimant did not appeal, and the determination became final.
3. The claimant is married with one college-age child whom he supports financially.
4. The claimant works full-time and earns \$32 per hour or \$5,504 each month.
5. The claimant's wife works for an accounting business. She works full-time during the tax season and 24 hours weekly during the rest of the year. She earns \$27 per hour. During the tax season, she earns \$4,644 each month.
6. The claimant and his wife have a savings account with approximately \$1,000 and a checking account with approximately \$3,000.
7. The claimant's home has an assessed value of \$457,448.
8. The claimant owns three automobiles valued at approximately \$14,000.
9. The total of the claimant's monthly income and assets is \$457,448.

10. The claimant's monthly expenses are as follows:

Mortgage	\$2400
Food	\$800
Utilities (includes cell phone)	\$1,000
Work-Related Travel	\$400
Real Estate Taxes	\$386
Property Insurance	\$170
Non-Reimbursed Medical Expenses	\$335
Total	\$5,491

11. The claimant's monthly payroll expenses are as follows:

State Taxes	\$275
Federal Taxes	\$345
Medicare Taxes	\$80
Union Dues	\$38
FICA	\$161
Total	\$899

12. The claimant pays \$632 each month for health insurance.
13. The claimant pays \$426 each month for automobile insurance.
14. He pays \$416 each month for his car payment.

15. He pays \$1,350 on outstanding student loans and credit card debt.
16. The claimant owes \$275,000 on his mortgage.
17. The claimant has \$15,870 in credit card debt.
18. The total of the claimant's expenses and liabilities is \$300,084.
19. The claimant used his unemployment benefits, now determined to be overpaid, to pay ordinary living monthly bills and expenses.
20. When he collected unemployment benefits, the claimant did not give up any right to other rights or benefits.

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 # 4 as inconsistent with the evidence in the record. Additionally, there appears to be a typographical error in Finding of Fact # 1, which states the claimant's benefit year began on May 28, 2023. As is reflected in DUA records, we believe that the review examiner intended to find the claimant's benefit year began on May 7, 2023. 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.

As the claimant was not found to be at fault for the overpayment, we must consider whether 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 his receipt of unemployment insurance benefits during the period at issue. Finding of Fact # 20. 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.

The findings of fact show that that the claimant has necessary and ordinary living expenses of approximately \$7,683 per month. This figure includes the claimant's monthly mortgage payment, monthly food, utilities, work-related travel expenses, property insurance, real estate taxes, non-reimbursed medical expenses, car insurance payments, car loan payments, and monthly credit card and student loan payments. Findings of Fact ## 10, 13, 14, and 15.

As to income, the review examiner erroneously found that the claimant worked full time, earning \$32 an hour, and calculated the claimant's gross monthly earnings as approximately \$5,504. The claimant provided three paystubs, which were admitted into evidence as a portion of Exhibit 4, corroborating his testimony that his hourly wage is \$25.16 an hour. These paystubs also show that the claimant worked varying hours, ranging from 45 to 52 hours each week.¹ Based on the information contained in the paystubs, the claimant earned gross wages of approximately \$5,130.39 a month, and net wages of approximately \$3,478.33 a month after deductions for federal and state taxes, union dues, and health insurance premiums. *See* Findings of Fact ## 11 and 12. As the review examiner used the incorrect hourly rate to calculate the claimant's earnings, the information contained in the claimant's paystubs most accurately reflects his gross and net monthly earnings.

The claimant's wife's earnings vary over the course of the year because of the seasonal nature of her work. During tax season her gross monthly wages are approximately \$4,644 per month. Finding of Fact # 5. However, this is the amount the claimant's wife earned before taxes. Also included in Exhibit 4 was a copy of three of the claimant's wife's paystubs. These indicate that approximately 25% of the wife's gross earnings was withheld for taxes. Thus, we can estimate that the claimant's wife's net monthly income during tax season is approximately \$3,483. As non-liquid assets are not to be included in determining whether the claimant has sufficient income and resources to meet his ordinary living expenses, the uncontested evidence in the record shows the

¹ Exhibit 4, while not explicitly incorporated into the review examiner's findings of fact, 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).

claimant's net household income is approximately \$6,961.33. *See* Board of Review Decision 0016 7937 34 (Mar. 9, 2016) (in denying the waiver, the review examiner erroneously considered all of the claimant's assets, including non-liquid assets such as the value of his home and 401(k)). Therefore, based on the aforementioned figures, the claimant's monthly necessary financial obligations exceed his net monthly household income by approximately \$720.

Since the claimant's ordinary and necessary living expenses exceed his net monthly household income, we conclude as a matter of law that he has met his burden to show that recovery of the overpayment would defeat the purpose of benefits otherwise authorized within the meaning of G.L. c. 151A, § 69(c).

The review examiner's decision is reversed. Recovery of the remaining overpaid benefit balance is waived.

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2025



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