

Review examiner incorrectly used prospective gross earnings to deny claimant's waiver. At the time of the hearing the claimant was laid off and receiving unemployment benefits, which did not cover 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 8907 32

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 January 2, 2011, and was initially awarded benefits. However, the DUA subsequently determined that these benefits were overpaid in a determination issued on May 14, 2012. He applied for a waiver of recovery of the overpayment, which the DUA denied in a determination issued on January 28, 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 March 1, 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 was overpaid benefits amounting to \$18,200.00.
2. The claimant's overpayment was not due to fault/fraud.

3. The claimant spent the overpaid benefits on household expenses.
4. The claimant is divorced.
5. The claimant was laid off from seasonal employment on [sic] January 2025. The claimant expects to return to full-time work in April 2025. The claimant is a union member. The claimant's gross income is about \$9,000.00 per month during his seasonal employment.
6. The claimant does not have any dependents.
7. The claimant's liabilities are: mortgage, about \$1,825 per month; utilities (electric, oil) \$700.00 per month; food, about \$1,000.00 per month; cell phone, \$125.00 per month; car note, \$957; car insurance \$120.00 per month; health insurance, \$953.00 per month; internet and cable, \$120; transportation (gas), \$200.00 a month; SBA loan, \$458 per month.
8. The claimant owns a 2023 Jeep Gladiator. The purchase price of the vehicle is \$53,900. The balance left to pay is \$48,000.00.
9. The claimant's house has an estimated value of \$444,000. The claimant purchased the house 4 years prior to the hearing and has 26 years of payments left on the mortgage.
10. The claimant has a savings account with a balance of \$8,960.00.
11. As of the date of the hearing, the claimant has about \$1,298.95 in a checking account.

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 and deems 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. 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 \$6,458.00 per month. Finding of Fact # 7. This figure includes the claimant’s monthly mortgage, monthly food, utilities, internet, cable, cell phone, car loan payments, car insurance payments, health insurance payments, transportation (gas), and SBA loan. Id.

As to income, the review examiner found that the claimant was currently unemployed, having been laid off in January of 2025. *See* Finding of Fact # 5. The claimant testified that his return to work generally happened in the spring but was dependent on the weather.¹ Although the review examiner found that the claimant was not earning income from his seasonal employment, she asked him to provide what his wages were when he was working. This was determined to be about

¹ While not explicitly incorporated into the review examiner’s findings, the claimant’s testimony in this regard, as well as the portions of his testimony referenced below, are part of the unchallenged evidence introduced at the hearing and placed in the record. As such, they are 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).

\$9,000 gross. Finding of Fact # 5. Although it was undisputed that the claimant was not earning this income at the time of the hearing, the review examiner used these wages in her analysis.

It was an error for the review examiner to credit the claimant with earnings from wages he did not have at the time of the hearing. Further, it was an error to count gross earnings instead of applying a net amount.

According to UI Online, the DUA's electronic record keeping system, at the time of his hearing, the claimant was receiving unemployment benefits of \$1,051.00 per week. The claimant testified that he was not earning additional income from other employment or sources, so the benefit amount must be considered his sole weekly earnings.

At the time of hearing, the claimant's net monthly income was \$4,519.30 (\$1,051.00 x 4.3),² and his monthly expenses were \$6,458.00. Based on the aforementioned figures, the claimant's necessary monthly financial obligations exceed his net monthly household income by approximately \$1,939.00.

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 - April 25, 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)**

² UI Online further shows that there were no taxes withheld from the weekly unemployment benefits paid to the claimant.

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.

CAS/MM/rh