

**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: N6-HJ5K-NR8D

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's request for a waiver of an overpayment assessment. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

On January 4, 2022, the DUA issued a Notice of Non-Monetary Issue Determination Potential Claim Eligibility and a Notice of Overpayment to the claimant. The Notices provide that the overpayment was not a result of fault by the claimant. The claimant requested a waiver of recovery of overpaid benefits, which was denied in a determination issued on February 28, 2022. The claimant appealed the waiver determination to the DUA hearings department. Following a hearing attended by the claimant, the review examiner affirmed the agency's determination and denied the waiver in a decision rendered on June 13, 2022. We accepted the claimant's application for review.

The waiver was denied after the review examiner determined 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 denied the claimant's waiver request by counting non-liquid assets in the calculation of her ability to meet her 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 filed a claim for Pandemic Unemployment Assistance ("PUA") benefits effective March 29, 2020.
2. In a Notice of Overpayment dated January 4, 2022, the claimant was notified of an overpayment on her PUA claim for the week ending April 11, 2020 to the week ending September 4, 2021, in the total amount of \$81,679.00. The Notice of Overpayment indicated that the overpayment was not the result of fault by the claimant and that the overpayment was related to a Potential Claim Eligibility (ICON) issue on the PUA claim.

3. On February 28, 2022, the claimant was issued a Notice of Overpayment Waiver Determination denying the application for waiver of the overpayment. The claimant appealed the determination.
4. The claimant used the PUA benefits, which have now been determined to be overpaid, to pay living expenses.
5. The claimant is married, and her spouse [sic] provides health care coverage to the claimant.
6. The claimant has two adult children, and she does not contribute to their expenses.
7. The claimant is currently unemployed.
8. The claimant's spouse is employed, and his gross monthly wages are \$6,045.
9. The claimant has a checking account with a current balance of \$1,839.63
10. The claimant has a savings account with a current balance of \$15,256.48.
11. The claimant has an IRA with a current balance of \$480,787.
12. The claimant has 4 CDs with a balance of \$3,003.27.
13. The claimant's stocks are valued at \$2,987.14.
14. The claimant has a 2019 Toyota Highlander valued at \$10,170. The claimant's car payment is \$659.42 per month.
15. The claimant withdrew \$3,400 from her IRA account to pay for living expenses as she is currently unemployed.
16. The claimant's current monthly household costs and expenses are as follows:

Mortgage	\$ 1755.26
Home equity loan	\$ 108.00
Property taxes	\$ 721.00
Solar panels	\$ 223.55
Home Security	\$ 66.00
Clothing:	\$ 160.00
Food	\$ 878.76
Electricity	\$ 132.31
Gas/oil	\$ 512.93
Car payment	\$ 659.42
Gas	\$ 129.30

Cell phone	\$ 87.00
Cable	\$ 279.00
Health care	\$ 174.00
Credit card	\$ 283.54
Car insurance	\$ 181.20
Homeowner's Insurance	\$ 154.00
HELOC	\$ 200.00
Clothing	\$ 100.00
TOTAL	\$6,805.27

17. The claimant does not have outstanding debts.

18. The claimant's income and assets exceed her liabilities.

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 original conclusion is free from error of law. After such review, the Board adopts the review examiner's findings of fact except as follows. The claimant's home equity loan and clothing expense appear to be entered twice, with different amounts. The claimant's testimony and waiver application (Exhibit 3) show that the claimant spent \$160 on clothing and \$200 toward the home equity loan.¹ Accordingly, Finding of Fact # 16 should be a total of \$6,597.27, not \$6,805.27. We accept Finding of Fact # 18 only insofar as it reflects the claimant's total household income and assets, including non-liquid assets. 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.

Under G.L. c. 151A, § 69(c), if the claimant erroneously received unemployment benefits without fault, it is her 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. Following the hearing, the review examiner found that the claimant was not at fault for the overpayment. *See* Finding of Fact # 2. We also agree that, because the claimant had not relinquished a valuable right based upon her receipt of benefits, the recovery of the overpayment would not be against equity

¹ Although not explicitly incorporated into the review examiner's findings, the claimant's testimony and application for a waiver are part of the unchallenged evidence introduced at the hearing and placed in the record, and 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).

and good conscience. *See* 430 CMR 6.03. However, we do not agree with her conclusion that the claimant failed to show that recovery would defeat the purpose of benefits otherwise authorized.

The DUA regulation at 430 CMR 6.03 defines the phrase “defeat the purpose of benefits otherwise authorized,” as follows:

[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.

With the revised calculation above, Finding of Fact # 16 shows that the claimant’s monthly expenses total about \$6,597 per month, whereas Finding of Fact # 8 provides that the claimant’s household income consists of her husband’s monthly salary of \$6,045.² Thus, the claimant’s monthly household expenses exceed the monthly income.

Finding of Fact # 11 shows that the claimant has \$480,787 in the form of an IRA. In her decision, the review examiner appears to have improperly incorporated the value of the claimant’s IRA into her calculation. We have held that non-liquid assets are not to be included in determining whether the claimant has sufficient income and resources to meet ordinary living expenses. Board of Review Decision 0016 7937 34 (Mar. 9, 2016). We do not expect the claimant to withdraw money from an IRA account in order to pay her bills or to purchase food for her family.

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

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

² This is his gross salary. Consequently, we assume that the monthly net cash income is actually less than this.



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

BOSTON, MASSACHUSETTS
DATE OF DECISION - December 21, 2023

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.

JCT/rh