

**Although originally determined to be at fault, the claimant was subsequently determined to be not at fault for the overpayment. As his expenses exceeded his 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  
19 Staniford St., 4<sup>th</sup> Floor  
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-HJJL-F92J**

### 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 February 18, 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 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 March 9, 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 3, 2022. We accepted the claimant's application for review.

The review examiner denied the claimant a waiver of the overpayments on the grounds that the DUA had determined the claimant was at fault for the overpayment, and, thus, he was not entitled to a waiver of overpayment under 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 on appeal is whether the review examiner's decision, which concluded that the claimant had been found to be at fault for the overpayment and therefore was not eligible for a waiver under G.L. c. 151A, § 69(c), 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 8, 2020.
2. In a Notice of Overpayment dated February 18, 2022, the claimant was notified of an overpayment on his PUA claim for the week ending February 8, 2020, to

the week ending September 4, 2021, in the total amount of \$10,206.00. The Notice of Overpayment indicated that the overpayment was the result of fault by the claimant and that the overpayment was related to a Potential Claim Eligibility issue on the PUA claim.

3. On March 9, 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 rent, household bills and expenses.
5. The claimant did not relinquish receiving any other benefits to receive the PUA benefits resulting in the overpayment.
6. The claimant is single with no dependents.
7. The claimant is currently employed as a part-time IT intern earning \$15 an hour. The claimant's net monthly income is \$1,100.00.
8. The claimant does not own a vehicle.
9. The claimant has a checking account with a current balance of \$1,200.00 and a savings account with a current balance of \$4,500.
10. The claimant's monthly household costs and expenses are approximately:

Rent	\$ 800.00
Electric	\$ 30.00
Natural Gas	\$ 30.00
Clothing	\$ 100.00
Food	\$ 400.00
Cable/Internet	\$ 65.00
Transportation	\$ 50.00
TOTAL	\$ 1,475.00

### 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. We accept Finding of Fact # 2 only insofar as it reflects what was stated in the February 18, 2022, Notice of Overpayment. This is because we note that the DUA's electronic record-keeping system, FastUI, shows that a subsequent Notice of Eligibility Issue Redetermination, dated December 5, 2022, did not find the claimant at fault with regard to the overpayment. 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 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. 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.

The claimant provided evidence demonstrating that his monthly expenses exceeded his net income. Findings of Fact ## 7 and 10. However, the review examiner concluded that the claimant was ineligible for a waiver of the overpayment, because the DUA had determined he was at fault for creating the overpayment. Finding of Fact # 2. The review examiner's decision was correct at the time that it was made. However, according to DUA records, a Notice of Eligibility Issue Redetermination was subsequently issued on December 5, 2022, with no finding of fault on the claim. A Notice of Overpayment was also issued on December 5, 2022, again with no finding of

fault. As these records confirm, the claimant has been determined not to be at fault for the overpayment. Accordingly, we conclude that the review examiner's determination denying the claimant's request for a waiver on this ground, although correct at the time it was issued, is now in error.

Since the claimant's ordinary and necessary living expenses exceed his 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 pursuant to G.L. c. 151A, § 69(c).

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

**BOSTON, MASSACHUSETTS**  
**DATE OF DECISION - December 28, 2022**



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](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.

JCT/rh