

Although originally determined to be at fault, the claimant was subsequently determined not to be at fault for the overpaid PUA benefits. Pursuant to the DUA's emergency regulations at 430 CMR 6.05(3)(a), the claimant is entitled to a waiver of overpaid benefits, because the DUA's original disqualifying determination was issued beyond the 21-day deadline in effect at the time.

**Board of Review
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Member
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Member**

Issue ID: N6-HKM8-DP7H

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 December 16, 2021, the DUA issued a Notice of Overpayment to the claimant. The Notice provides that the overpayment was a result of fault by the claimant in connection with determinations related to COVID-19 eligibility and potential claimant eligibility (ICON). The claimant requested a waiver of recovery of the overpaid benefits, which was denied in a determination issued on December 15, 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 February 6, 2023. We accepted the claimant's application for review.

The review examiner denied a waiver on the grounds that the DUA had determined the claimant was at fault for the overpayment, and, thus, she was not entitled to a waiver of the 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, as well as information in the DUA's electronic record-keeping system, FAST UI.

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 22, 2020.

2. In a Notice of Overpayment dated December 16, 2021, the claimant was notified of an overpayment on her PUA claim for the week ending March 28, 2020, to the week ending August 22, 2021, in the total amount of \$21,501.00. 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 (ICON) and a COVID-19 Eligibility issue on the PUA claim.
3. On December 15, 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 for her snowboarding trips, snowboarding equipment, icon pass, go snowboarding her for rent and, groceries [sic].
5. The claimant does not have any dependent children.
6. The claimant is married and lives with her husband, who shares the household expenses.
7. The claimant has been employed full-time as a retail manager at a climbing and fitness gym since September 1, 2020. Her monthly gross wages are \$3,561.
8. The claimant's husband is currently unemployed.
9. The claimant's husband has been receiving severance pay since December 1, 2022, and it will end on March 9, 2023. His monthly gross wage is [sic] \$15,416.
10. The claimant owns a 2014 Honda Civic. The value of the car is \$9,000.
11. The claimant's husband financed a 2021 Chevy Colorado. The Kelly Bluebook value of the car is \$32,000. He pays \$400 a month; the remaining balance is \$5,170.
12. The claimant did not relinquish any other benefits in Massachusetts to receive the PUA benefits resulting in the overpayment.
13. The claimant has a checking account balance of \$6,747.
14. The claimant has a savings account balance of \$91,444.
15. The claimant has an IRA account balance of \$73,991.
16. The claimant's monthly household costs and expenses are approximately:

Mortgage	\$ 1,588.00
Property Tax	\$ 209.00
Electricity/Gas	\$ 120.00
Water/Sewer	\$ 225.00
Food/Groceries	\$ 500.00-----\$ 1,000.00
Car Payment-Chevy	\$ 400.00
Clothing	\$ 50.00-----\$ 100.00
Internet	\$ 50.00
Transportation/Gas	\$ 100.00
Cell Phone	\$ 50.00
Home Insurance	\$ 100.00
Car Insurance	\$ 192.00
TOTAL	\$ 3,582.00-----\$ 4,132.00

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 the portion of Finding of Fact # 2, which states that the overpayment was the result of fault only insofar as it reflects what was stated in the December 15, 2022, Notice of 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 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. 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."

On April 19, 2022, and July 15, 2022, the DUA promulgated emergency regulations which temporarily revised portions of 430 CMR 6.00. One of the revisions in the July 15, 2022, emergency regulations was to include additional conditions for those who were overpaid benefits through no fault of their own for weeks in 2020 and 2021. The July 15, 2022, emergency regulations at 430 CMR 6.05 provided, in relevant part:

(3) Special Relief for Pandemic Overpayments. Individuals who were overpaid unemployment benefits through no fault of their own for weeks in 2020 and 2021, and who request waivers of such overpayments, shall be presumptively entitled to waivers in the following circumstances:

(a) where the department awarded unemployment benefits and subsequently detected a nonmonetary issue affecting eligibility for benefits but failed to issue a determination regarding that issue within 21 days after the department had initially detected the issue...

The review examiner concluded that the claimant was ineligible for a waiver of the overpayment because the DUA had determined she 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 in FAST UI, the DUA removed the fault finding on both the COVID-19 eligibility and potential claim eligibility (ICON) issues in notices issued on February 22, 2023.

As these records confirm that the claimant has since been determined not to be at fault for the overpayment, we consider whether the claimant is otherwise eligible for a waiver.

With its February 22, 2023, notice, DUA redetermined its original potential claim eligibility (ICON) determination, concluding that the claimant was not disqualified for this reason. Thus, the only remaining reason for the overpayment was the COVID-19 eligibility determination. According to FastUI, the DUA detected the COVID-19 eligibility issue on August 10, 2020. However, it did not issue a determination regarding that issue until 119 days later, on December 7, 2020. This is past the 21-day deadline as required by 430 CMR 6.05(3)(a). Since the DUA failed to issue a determination regarding her COVID-19 eligibility within 21 days after detecting the issue, she is entitled to a waiver.

We, therefore, conclude as a matter of law that the claimant is entitled to a waiver of overpaid benefits pursuant to G.L. c. 151A, § 69(c), and DUA's emergency regulations at 430 CMR 6.05(3)(1).

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

BOSTON, MASSACHUSETTS
DATE OF DECISION - March 28, 2024



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.

MM/rh