

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-0911

Affirmed
Request for Waiver Denied

PROCEDURAL HISTORY: On February 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was overpaid \$4,109 in Emergency Unemployment Compensation (EUC) benefits for which he was ineligible (decision # 105532). On February 20, 2014, claimant filed a request for waiver of overpayment recovery. On February 26, 2014, the Department's decision that claimant was overpaid \$4,109 in EUC benefits for which he was ineligible became final without a request for hearing having been filed. On March 12, 2014, the Department served notice of an administrative decision denying claimant's waiver request (decision # 74435). Claimant filed a timely request for hearing on that decision. On April 30, 2014, ALJ Holmes-Swanson conducted a hearing on decision # 74435, and on May 6, 2014 issued Hearing Decision 14-UI-16867, affirming that decision. On May 20, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) When claimant filed his request for waiver of overpayment recovery, his gross total household income per month was \$2,720. His monthly household expenses included \$400 for housing, \$400 for food and bills, \$95.98 for internet access, \$461.66 for transportation and \$343 for child support, a total of \$1,700.64.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant's request for waiver of overpayment recovery should be denied.

Under Public Law 110-252, §4005(b), an individual who was overpaid EUC benefits is liable to repay those benefits to the appropriate state agency administering state unemployment benefits. A state agency may waive collection of any overpaid EUC benefits if it determines that the overpayment was made without fault on the part of the individual, and requiring repayment from the individual would be "contrary to equity and good conscience." Public Law 110-252, §4005(b)(1) and (2). In the present case, it is undisputed that the \$4,109 overpayment was not claimant's fault. At issue is whether requiring repayment would be contrary to equity and good conscience.

OAR 471-030-0053(2) states that it is “‘against equity and good conscience’ to recover overpaid amounts if the person requesting the waiver “has no means to repay the benefits” and has “total allowable household expenses that equal or exceed 90% of the total household income less unemployment benefits.” “Allowable household expenses” are based on the Internal Revenue Service Collection Financial Standards. OAR 471-030-0053(2). The IRS standards set forth, by geographic region, the acceptable monthly amounts for the expenses it deems necessary for a household. However, to the extent that claimant’s actual expenses differ from the IRS standards, the lesser amount will be used to calculate his total allowable monthly expenses.

In the present case, the Department interpreted “total household income” to mean net total household income, and calculated claimant’s net total household income per month by multiplying his gross total household income per month (\$2,720) by 75%. We defer to the Department’s interpretation of the phrase “total monthly household income” in its own rule, especially given that its interpretation of that phrase benefits claimant. We also accept the Department’s calculation of claimant’s net total household income per month, given that claimant did not assert or show that the Department’s calculation was incorrect. We therefore conclude that claimant’s “total household income” was \$2,040.

OAR 471-030-0053(2) therefore authorizes waiving recovery of claimant’s overpayment if he had “total allowable household expenses” that equaled or exceeded \$1,836 (90% of \$2,040). The parties agreed that claimant’s actual total allowable household expenses were \$1,700.64 per month. Because claimant’s actual total allowable household expenses were less than \$1,836, he was not entitled to a waiver of recovery his overpayment. Claimant’s request for a waiver therefore is denied.

DECISION: Hearing Decision 14-UI-16867 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: June 30, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.

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