



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

In the Matter of

VELMA B'S BEAUTY ACADEMY,

Respondent.

Docket No. 06-48-SP

Federal Student Aid Proceeding

PRCN: 200440623553

Appearances: Velma Brooks, President, Dallas, Texas, for Velma B's Beauty Academy.

Denise Morelli, Esq., of the Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Aid.

Before: Judge Ernest C. Canellos

DECISION

Velma B's Beauty Academy (Velma B's), located in Dallas, Texas, is a proprietary postsecondary educational institution that provides programs of study in cosmetology. It is licensed by the Texas Cosmetology Commission, is accredited by the National Accrediting Commission of Cosmetology Arts and Sciences and is eligible to participate in the Federal Pell Grant and SEOG programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV). 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* Within the U.S. Department of Education (ED), the office of Federal Student Aid (FSA) is the organization that has cognizance over and administers this program.

From September 21 through September 24, 2004, Institutional Review Specialists from FSA's Dallas Case Management Team conducted an on-site program review of Velma B's administration of the Title IV programs for award years 2002–2003, and 2003–2004. On October 4, 2005, the Acting Team Leader of the Dallas School Participation Team issued a final program review report citing a number of violations of regulations uncovered during the site visit. Subsequently, Velma B's provided additional information to FSA. As a consequence, and under authority of Subpart H, 34 C.F.R. § 668.111 *et seq.*, on September 28, 2006, FSA issued a Final Program Review Determination (FPRD) that resulted in the dismissal of some of the

findings in the program review report, affirmance of other findings of that report, and the demand that Velma B's return \$95,988.00 to ED. Velma B's submitted additional information to FSA subsequent to the issuance of the FPRD that resulted in FSA reducing ED's demand to \$60,941.00.

FSA's demand in the FPRD was based on four actionable findings. A review of the case file indicates that Velma B's did not appeal findings 3 (Ineligible Pell Grant payment -- \$3,120.) and 6 (Bank charges made to federal accounts -- \$45.00) of the FPRD. As a consequence, the amounts demanded in those findings are not before me in this appeal and may be, otherwise, collected. I note, however, that Velma B's asserts that it paid the liability for finding 3 and provides a copy of a check that it claims establishes the payment.¹ Of the remaining findings, FSA determined that Velma B's failed to verify completely certain required information used in determining students' entitlement to federal financial assistance. For the 16 students now remaining in this category, \$47,306.00 in federal student aid funds was allegedly erroneously disbursed. The second finding involved an allegation that students were disbursed Pell Grant aid on the basis of erroneous calculations. For the 10 students remaining in this category, FSA demanded the return of \$10,470.00.

On November 9, 2006, Velma B's exercised its rights and appealed the demand in the FPRD, and on November 29, 2006, I was assigned to adjudicate this matter. I ordered the parties to submit their briefs and evidence on a prescribed schedule. Between January 24, 2007, and April 14, 2008, I stayed the proceedings at the parties' joint request to allow them an opportunity to negotiate a settlement of the matter. After being informed that the parties had reached an impasse in their negotiations, I reinstated the briefing schedule and proceeded to a decision on the merits.

I begin my consideration by noting that this proceeding is governed by regulations promulgated under Subpart H of the general provisions. It is well established that in a Subpart H -- audit and program review proceeding, the institution carries the burden of proving by a preponderance of the evidence that the Title IV funds in issue were lawfully disbursed. In accordance with 34 C.F.R. § 668.116(d), to sustain its burden, an institution must establish through the submission of credible evidence, that (1) the questioned expenditures were proper and (2) the institution complied with program requirements.

First, FSA alleged that Velma B's failed to completely verify student information on their applications for student aid, when such verification was required. *See*, 34 C.F.R § 668.51. In its appeal, Velma B's claimed, without providing supporting evidence, that it verified the required students' information in all cases. FSA reviewed and investigated that claim and determined that none of the remaining students' information was properly verified and provided an attestation from the staff member who inquired into that issue, to that effect. Some of the conflicting information in the files included: differences in family size, taxes paid, and family support. There were also incidences where Velma B's erroneously claimed that verification was not

¹ In a responsive pleading dated August 22, 2008, FSA acknowledged such payment.

required. As a consequence of these factors, as to this finding, I have determined that Velma B's has failed to satisfy its burden of proof and persuasion and, as a consequence, must return \$47,306.00 to ED.

Second, FSA alleged that Velma B's failed to properly calculate Pell Grant payments and, as a result, overpaid ten of their students a total of \$10,470.00. In accordance with the provisions of 34 C.F.R. § 668.4(c), once a student's Title IV entitlement is established, federal funds are disbursed to that student incrementally and on a mandated schedule. During the program review, it was determined that a number of students had been disbursed Pell Grant payments earlier than authorized. In those cases where it could be determined that a student eventually attained the time at which a payment would be authorized, no demand for return of funds was made. However, a number of students received early payments with no corresponding evidence that they ever reached the time when they became entitled to the federal aid. In its submissions on this finding, Velma B's acknowledged FSA's demand for three students (\$3,337.00) but claimed that because six of the other seven students had graduated and it had issued a refund for the seventh, it should be relieved of liability for return of their federal aid. FSA pointed out that, as to three of those students, the gravaman of the violation was not affected by graduation and, there was insufficient proof that any of the others had, in fact, graduated. Further, it could find no evidence that a refund payment had been made for the remaining student. With its "rebuttal brief," received on July 23, 2008, Velma B's has provided evidence that three students had graduated, apparently satisfying Velma B's burden of proof relative to those students. In the final "response brief" detailed above, FSA accepts that the three students did graduate and no payment was due for them. Therefore, I find only that Velma B's failed to meet its burden of proof and persuasion as to the remaining seven students and, therefore, must return \$7,939.00 to ED for this finding.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is ORDERED that Velma B's Beauty Academy pay to the U. S. Department of Education a total of \$55,245.00, for the findings as enumerated above.

Ernest C. Canellos
Chief Judge

Dated: August 26, 2008

SERVICE

A copy of the attached document was sent to the following:

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