



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

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In the Matter of

**VIRGIE**

Respondent.

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**Docket No. 11-25-0**

Overpayment Proceeding

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FINAL DECISION

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On April 6, 2011, the Office of Management ("OM") issued a notice of debt letter<sup>1</sup> to [Respondent] requesting the return of \$2,976.50 in Transit Benefits Program funds paid to her for the months of September 2007 through January 2010. The theory of the notice is that Respondent left the employ of the Department of Education ("ED") on July 7, 2007 and, by virtue of an error by ED, she continued to receive transit benefits for over the next two years even though she was not entitled to those benefits. Therefore, Respondent has a debt obligation to the Department.

Statement of Facts

Respondent was employed at ED until her separation on July 7, 2007. As of May 27, 2007, she was entitled to receive \$110 per month in transit benefits from ED as part of the transit benefits program, and received those benefits electronically. The benefits were available from any fare card machine in any Metro station and were obtained by downloading the benefits from her SmarTrip account onto her registered SmarTrip card.

In July 2007, Respondent accepted a position at the United States Department of Health and Human Services ("HHS"). On Friday, July 6, 2007, as a routine part of her out-processing from ED, she signed and submitted a "Withdrawal Form for Transit Benefits and Parking Programs" ("Withdrawal Form") to Management Services at ED. The Withdrawal Form is submitted when employees depart ED and, when processed, removes them from ED's Transit

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<sup>1</sup> Hereafter referred to as "notice."

Benefits or Parking Program . Respondent's form was faxed to Management Services and is date stamped July 6, 2007. Unfortunately, due to an error by the Department, Respondent's form was not completely processed and she was not removed from ED's transit benefits program.

The following Monday, Respondent began working at HHS. Upon her arrival at HHS, Respondent enrolled in its transit benefits program. She was told that she was eligible to receive \$110 per month in transit benefits from HHS, the same amount she had received at ED. Respondent registered her SmarTrip card with the HHS transit benefits program, and HHS issued paper fare cards totaling \$276 to Respondent on July 17, 2007. These cards constituted her transit benefits for the months of July, August and September, 2007, the period prior to the activation of her SmarTrip account at HHS.<sup>2</sup> In a July 19, 2007 email, Respondent was told that her SmarTrip card registration would be complete in October 2007, after which time she could proceed with monthly electronic downloads to retrieve her transit benefits from HHS.<sup>3</sup>

On July 30, 2007, only thirteen days after receiving nearly three months' worth of transit benefits in paper fare cards, Respondent downloaded \$110 to her SmarTrip card electronically. She did so again on September 9. The \$220 in funds received electronically by Respondent were in addition to the transit benefits she had received as paper fare cards and exceeded her authorized benefit of \$110 per month. These benefits were also downloaded before the October activation of Respondent's electronic HHS account, which date Respondent was made aware of by the July 19 email. Both times, the benefits Respondent downloaded came from ED.

As of October 2007, Respondent's enrollment in the HHS transit benefit program was complete, and she was able to download her benefits from HHS directly to her SmarTrip card. Thereafter she made approximately two downloads per month to her card. The record shows that one download amount was generally \$110, and the other dollar amount was between \$15 and \$100. Respondent continued this pattern every month from October 2007 until January 2010 and downloaded more than her \$110 subsidy each month. During this period she received \$2,976.50 of transit benefits from ED and approximately \$2,482 of transit benefits from HHS. It was not until January 4, 2010 that ED discovered that Respondent had not been removed from its transit benefits program and deactivated her account.<sup>4</sup>

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<sup>2</sup> The record indicates that the paper fare cards were issued for July, August and September to provide Respondent with transit benefits while HHS registered Respondent in its electronic transit benefits program. The record also shows that though the paper fare cards were issued in quarterly amounts, the electronic benefits would be downloaded monthly.

<sup>3</sup> Respondent enrolled the same SmarTrip card she had used at ED for her transit benefit account at HHS, and both agencies used the number on the SmarTrip card as the account number. Both accounts therefore bore the same registration number, and funds from HHS were to be downloaded to the same card as she had used while employed by ED.

<sup>4</sup> These numbers are based on the documentation received from ED and HHS listing the total amount of each download Respondent made from her ED and HHS transit benefits accounts between July 2007 and January 2010.

## Discussion

At a hearing in this matter held June 7, 2011, Respondent clarified why she believed she did not owe the debt to ED. First, she stated she believed that by signing and submitting the Withdrawal Form, she had been officially removed from ED's transit benefit program and therefore has no obligation to return any subsequent transit benefits received by her. To support her assertion that she had followed proper procedures, Respondent introduced a witness from ED, Ms. Desi Availa, who works in the Office of the Secretary. Ms. Availa stated that as part of her job she sends out notifications of employee departures to all departments and requests confirmation that a departing employee's program accounts have been closed. She then receives forms for each out-processed employee from those departments which confirm that all departing employee accounts have been closed. Ms. Availa confirmed that she received the form indicating that Respondent had been out-processed from all ED programs, including the transit benefits program. Ms. Availa further indicated that ED erred in not removing Respondent from its system.

Additionally, Respondent stated that she did not believe the fare machines could issue more than her monthly allotment of \$110, and she therefore believed she was entitled to any benefits she could download. Respondent stated that she did not track the amounts she downloaded and did not know where the funds originated. Respondent elaborated that she believed HHS allowed her to download her benefits quarterly, which could account for her being able to draw more than \$110 per month. In essence, Respondent argued that she thought that the funds in excess of \$110 each month were an "advance" of sorts on the next month's benefits during each quarter. Respondent further testified that she had recertified for HHS' transit benefits program each year, and she did not understand how she could recertify if she already had an account with ED. Respondent concluded that, for the above reasons, she should not have to repay the monies.

The sole issue under consideration is whether the receipt of transit benefits paid by ED constitutes a debt owed by Respondent. One context in which debt is accrued is the payment of benefits by an agency to an employee or former employee who is not entitled to those benefits. In such a case, the theory of the debt is grounded on the presence or absence of the employee or former employee's entitlement to the benefit. Thus, the fact that the payment of benefits was the direct result of an error by the government or that the employee or former employee was unaware of the amount or source of the erroneous payment has no effect on the resolution of the legal issue, which is the existence of the debt and the employee's liability for it.

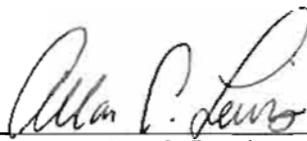
In this instance, it is clear that Respondent knew or should have known that something was amiss regarding her transit benefits as early as three weeks into her position at HHS. At that time she downloaded benefits two months prior to the activation of her electronic account at

HHS and only two weeks after receiving \$276 in paper fare cards for this period. Respondent should also have been alerted to the error with her transit benefits account when she was able to download \$110 of benefits in September 2007, after she had already received her benefits for that month in the form of paper fare cards. It is irrelevant that Respondent was unaware of the origin of the benefits, as she was not yet entitled to receive electronic benefits from HHS. Despite having received notice to that effect, she continued to download funds to her SmarTrip card.

Additionally, Respondent confirmed that she was entitled to \$110 in benefits per month from HHS, yet she still downloaded more than \$110 in almost every month between July 2007 and January 2010. Respondent's belief that she had been officially released from ED's transit benefits program when she submitted the Withdrawal Form does not release her from the debt created when she subsequently downloaded transit funds to which she was not entitled.

### Conclusion

The purpose of this action is to recapture monies owed due to erroneous payments made by ED to Respondent. The issue before this tribunal is simply whether Respondent received funds to which she was not entitled, thereby incurring a debt to the Department. Respondent confirmed that she separated from ED on July 7, 2007 and subsequently received transit benefits from the Department. Whether Respondent knew that the funds she received were from ED is not relevant to establishing the existence of the debt. Respondent has not submitted any evidence to refute the records showing her electronic download of transit benefits from ED after her departure from the Department. Because Respondent was not eligible to receive these transit funds from ED but nonetheless collected them, she owes a debt of \$2,976.50 to the Department.<sup>5</sup>



Allan C. Lewis

Chief Administrative Law Judge

Issued: July 1, 2011  
Washington, D.C.

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<sup>5</sup> If Respondent wishes she may file a waiver request for this overpayment. In a waiver proceeding, the debtor acknowledges the validity of the debt but argues that he or she should not be required to repay the debt on the basis of equitable circumstances connected to the debt, as well as because there is no indication of fraud, misrepresentation, fault or lack of good faith by the debtor. Any waiver request must be filed within thirty days of receipt of this decision with the Office of Hearings and Appeals.