



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
TELEPHONE (202) 245-8300

In the Matter of

RM,

Respondent/Appellant.

Docket No. 20-31-WG

Administrative Wage Garnishment
Treasury Case No: [redacted]
AWG ID: None Provided
Dept Acct. No: [redacted]

Appearances: RM, Respondent/Appellant, self-represented.
Renu Kapur, Office of Finance and Operations, Office of Financial
Management, Accounts Receivable and Bank Management Division, for
the U.S. Department of Education
Before: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

This appeal commenced with the timely filing of a request for a hearing filed with the United States Department of the Treasury, Bureau of the Fiscal Service (BFS). The request for a hearing was in response to a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (Notice), dated September 17, 2019. The Notice indicates that the BFS, on behalf of the United States Department of Education (Department), intended to initiate proceedings to issue an administrative wage garnishment order to collect the debt owed by Respondent in the amount of **\$10,307.02**, which included interest, penalties, and costs.¹

¹ Evidence submitted by the Department asserted the initial scholarship amount was \$12,500.00 but provided no explanation of why wage garnishment amount was only \$10,307.02, except to informally inform OHA that this account was referred to OFO-OFM “quite some time back” and there have been collections on the account (email communication dated July 30, 2020, 6:15 PM to OFO_OHA@ed.gov). The use of the term collections is not further explained and therefore it is unknown whether collections were voluntary payments or collected by another means prior to issuance of the September 17, 2019 notice.

On July 30, 2020, the Office of Hearings and Appeals received this request for hearing² and other documentation from the Department's Office of Finance and Operations, Office of Financial Management (OFM). The BFS, on behalf of the Department, asserted its right to initiate Administrative Wage Garnishment proceedings pursuant to 31 U.S.C. § 3720D and 31 C.F.R. § 285.11. On August 3, 2020, pursuant to the hearing procedures in 34 C.F.R. § 34.13, I was assigned as the hearing official in this matter and I issued an Order Governing Proceeding (OGP) on August 10, 2020.

The OGP included a hearing schedule and the Department was ordered to file evidence necessary to establish the validity of this debt, consistent with the statutory and regulatory authorities. When the Department failed to follow that OGP, I issued an Order to Show Cause (OSC) to the Department. Thereafter, the Department filed additional evidence along with a response to the OSC on September 4, 2020. Additionally, on September 14 and 15, 2020, Respondent filed additional documentation to support her claim that repayment would cause financial hardship.

Having reviewed the evidence submitted, the administrative record is closed, and this matter is ready for decision.

II. Issues

1. Has the Department met its burden of proof to establish the existence and amount of the debt identified in the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated September 17, 2019?
2. If the Department has met its burden of proof, has the Department established that the debt is delinquent?
3. Has the Respondent established the proposed garnishment would cause financial hardship?

III. Legal Framework/Applicable Laws and Regulations

A. Applicable Statute

Subject to certain conditions, the head of an executive agency, that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual, may garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual (31 U.S.C. § 3720D). The individual shall be provided an opportunity for a hearing on the existence or the amount of the debt and to establish that imposition of the wage garnishment order would cause financial hardship (31 U.S.C. § 3720D(b)(5)(A) and (B)).

² The request was signed by the Respondent on October 2, 2019, but again no explanation was provided for the nearly nine month delay in transferring this request to the OHA (*See*, footnote 1).

B. Applicable Regulations

Federal agencies seeking to collect a delinquent nontax debt owed to the United States through wage garnishment must follow the procedures set forth in 31 C.F.R. § 285.11. Generally, whenever an agency determines that a delinquent debt is owed by an individual, the agency may initiate proceedings administratively to garnish the wages of the delinquent debtor (31 C.F.R. § 285.11(d)). The agency must provide proper notice and an opportunity for a hearing (31 C.F.R. §§ 285.11(e) and (f)). In a hearing on a wage garnishment, the agency has the burden of proving the existence or amount of the debt (31 C.F.R. § 285.11(f)(8)(i)). Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment are unlawful, would cause financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law (31 C.F.R. § 285.11(f)(8)(ii)).

An agency shall prescribe regulations for the conduct of administrative wage garnishment hearing consistent with 31 C.F.R. § 285.11(f) or shall adopt this section without change by reference (31 C.F.R. § 285.11(f)(1)). The Department chose to prescribe regulations. The Department's regulations are found at Title 34 of the Code of Federal Regulations, Part 34.

The Department's regulations pertaining to the burden of proof are mostly consistent with 31 C.F.R. § 285.11(f)(8) but provide that the Department has met its burden by including in the record, and making available to the debtor on request, records that show the debt exists in the amount indicated in the notice, and payment of the debt is delinquent (34 C.F.R. § 34.14(a)(1) and (2)).

The Department administers rehabilitation training programs that may give rise to a nontax debt owed to the United States (*See generally*, 34 C.F.R. Part 385). One such program is the Rehabilitation Long-Term Training Program (*See generally*, 34 C.F.R. Part 386). Under this program, institutions of higher education are eligible for awards of financial assistance (34 C.F.R. §§ 386.1, 386.2, and 385.2)³. Once an award of financial assistance is made, the grantee must use a designated portion of the grant for scholarships and must meet specified requirements prior to disbursement of scholarship assistance (34 C.F.R. §§ 386.31 and 386.33)⁴.

Each grantee must provide certain assurances when that grantee intends to provide scholarships (34 C.F.R. § 386.34⁵). Prior to disbursement of any scholarship the grantee must obtain a written agreement including the applicable terms and conditions related to receipt of the scholarship and the agreement must be signed by the recipient prior to disbursement of any scholarship funds (34

³ While there are two versions to each of these regulations, current as of September 19, 2016 and up to September 18, 2016, the versions for §§ 385.2 and 386.2 are identical. To the extent that § 386.1 directly effects this analysis, the version in effect to September 18, 2016 was applied.

⁴ There are two versions to each of these regulations - current as of September 19, 2016 and up to September 18, 2016. To the extent that the application of these regulations directly effects this analysis, the version in effect to September 18, 2016 was considered and applied to this analysis.

⁵ This regulation was amended effective September 19, 2016. All cites in this decision to this regulation are to the version that was effective to September 18, 2016 because the Department asserts that the Respondent began a program of study on January 15, 2007 and graduated on August 31, 2009.

C.F.R. § 386.34(a)-(c)). In addition to maintaining standards for tracking satisfactory progress of a recipient scholar, the grantee must maintain a tracking system to determine the recipient scholar's compliance with the agreement, make necessary reports to the Secretary, and maintain records of the tracking and reports for a time equal to the time required to fulfill the recipient scholar's service obligation (34 C.F.R. § 386.34(g)-(i)). The grantee must establish policies and procedures for receiving written certification from recipient scholars at the time of exit from the program (34 CFR § 386.34(f)). The written certification must acknowledge the name of the institution, the number of the Federal grant that provided the scholarship, the scholar's field of study, the number of years the scholar needs to work to satisfy the work requirements, the total amount of the scholarship assistance received subject to the work-or-repay provisions, the time period during which the scholar must satisfy the work requirement and all other obligations of the scholar in 34 C.F.R. § 386.34 (34 CFR § 386.34(f)(1)-(6)).

IV. Review of Evidence and Analysis

A. Burden of Proof

Consistent with the burden of proof required by the applicable regulations, the Department has the burden of proving the existence and amount of any asserted debt (31 C.F.R. § 285.11(f)(8)(i) and 34 C.F.R. § 34.14). An alleged debtor may challenge the existence of the asserted debt, challenge the amount of the debt, challenge the garnishment amount, or any combination of these options.

When an alleged debtor challenges the existence or amount of the alleged debt, the alleged debtor must present, by a preponderance of the evidence, that no debt exists, or the amount of the debt is incorrect (31 C.F.R. § 285.11(f)(8)(ii) and 34 C.F.R. § 34.14(b)(1) and (2)). When the garnishment amount is challenged, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause financial hardship, or that collection may not be pursued due to operation of law (31 C.F.R. § 285.11(f)(8)(ii) and 34 C.F.R. § 34.14(c) and (d)).

B. The Department's Record in Support of the Asserted Debt

Upon initial transfer of this request for a hearing to the Office of Hearings and Appeals, the Department, through an employee of the OFM, forwarded two electronic documents in portable document format (PDF) by email. One document was the Respondent's request for hearing, found in the record at OES Document 1, and the second was a document identified as proof of debt, found in the record at OES Document 2. The Department's initial transfer did not provide records that established the asserted debt as required by the applicable regulations. Therefore, the Department was ordered to file evidence necessary to establish the existence of the asserted debt and evidence supporting that the Respondent was delinquent.

While the Department did not initially follow that order, it did file additional Department records in response to the OSC. Specifically, the Department filed additional evidence identified as Exhibit 1, which included evidence from the Department of Education, and Exhibit 2, which included evidence from the Department of Treasury (OES Document 7). Exhibit 1 duplicates the same records originally filed as OES Document 2. Exhibit 2 includes three notices from the

Department of the Treasury. The first is an invoice, dated March 14, 2017 indicating the Respondent received a RSA Scholarship Grant in the amount of \$12,500.00, which was to be paid on or before April 13, 2017 (identified as Exhibit 2a). The second is a past due notice dated April 17, 2017, which added interest of \$11.11 to the amount due (Exhibit 2b). The third is a notice dated May 1, 2017, indicating that the debt is “seriously in default and payment is due immediately” and added interest of \$15.97 (Exhibit 2c). The Department provided no other records to establish the asserted debt.

The Department record identified as proof of debt is a letter dated September 19, 2016, from the Chief of Training Programs within the Department’s Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration (RSA), to the Respondent and includes some relevant information. Specifically, it reports records maintained by the university where Respondent studied establish that she began her program of study on January 15, 2007 and graduated on August 31, 2009. It further asserts that Respondent received an RSA scholarship totaling \$12,500.00 with a service obligation of three-and-a-half-years that was due to begin on August 31, 2011. Finally, the letter informed Respondent that the due date upon which she was to complete her service obligation was March 1, 2015. In the letter, the Department identified this contact was an attempt to verify the information provided by the university.

Included with the proof of debt letter was a document entitled “Scholarship Agreement.” Printed at the top of the document was FY 2007-2008. Additionally, the notation “FY 2008-2009” was hand-written under the typed information for FY 2007-2008. The Department provided no explanation of what these time periods represent or why one appeared to be a hand-written addition. The document included general information about the scholarship program that is required under 34 C.F.R. §§ 386.34 and 386.40. The agreement was signed on November 25, 2008 by both the Respondent and the Grant Administrator from the university.

C. Analysis

A grantee is required to make certain assurances prior to making a scholarship award under the Rehabilitation Long-Term Training Program (34 C.F. R. § 386.34). Prior to the initial disbursement of scholarship funds to an individual (scholar), the grantee and the scholar must enter into a written agreement that includes the terms and conditions required by this regulation (34 C.F. R. § 386.34(a)). Pursuant to 34 C.F. R. § 386.34(c), minimally, the agreement must notify the scholar:

- that he or she will be required to maintain specified employment on a full- or part-time basis, for a specified period of time that is not less than the full-time equivalent of two years for each year for which scholarship assistance is awarded, and to be completed within a specified period;
- that if the scholar does not complete the work/service requirement, the scholar will be responsible for repayment of all or part of any scholarship, plus interest, unless the Secretary allows an exception or deferral;
- that the employment obligation as applied to a part-time scholar will be based on the

- accumulated academic years⁶ of training for which the scholarship is received;
- that until the employment obligation is satisfied, the scholar will inform the grantee of any changes in name, address, or employment status; and,
- that when a scholar enters into repayment status, the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that will be repaid by the scholar, including interest and costs of collection and, if the scholar fails to meet the repayment obligation, may be collected by the Secretary according to applicable Department regulations.

When a scholar exits a program, the grantee is required to obtain written certification from the scholar that acknowledges the correctness of information that includes the name of the institution and the number of the Federal Grant that provided the scholarship, the total amount of scholarship assistance received subject to the work-or-repay provisions, the scholar's field of study and the service obligation with creditable employment, the number of years the scholar needs to work to satisfy the work requirements, the time period during which the scholar must satisfy the work requirement, and all other obligations specified in 34 C.F.R. § 386.34 (34 C.F.R. § 386.34(f)).

The Department's records in this matter have multiple deficiencies. First, the record identified as "Scholarship Agreement" does not comport with the written agreement required by 34 C.F.R. § 386.34(c), because the Department provided no evidence that this agreement was signed prior to the disbursement of scholarship funds that may have been provided to the Respondent, as is required by the Department's regulations. Second, the records fail to establish how the Respondent's service obligation was determined and that it was properly calculated based on the receipt of scholarship funds. Lastly, the Department failed to submit any document that satisfies the requirement for an exit certification under 34 C.F.R. § 386.34(f). These identified deficiencies raise questions whether the grantee had policies and procedures in place that are consistent with the regulatory requirements or whether the grantee simply failed in its requirement to provide accurate and complete scholar information to the Department.

While the September 19, 2016 letter fills in some of the information that the grantee was required to provide to assist the Department in establishing the existence of the asserted debt, like the name of the grantee and the RSA grant numbers, it provides other evidence that undermines the ability of the Department to establish this debt as asserted. Although the Respondent started the program of study on January 15, 2007, graduating nearly two years and eight months later, on August 31, 2009, the Scholarship agreement was not signed by Respondent until November 25, 2008, approximately nine months before the Respondent finished the course of study. If the Respondent received scholarship funds only for nine months after signing the agreement, the calculation of a service obligation of three-and-a-half years is not supported. If the Respondent received scholarship assistance for more than nine months then the scholarship agreement could not have been signed prior to the distribution of scholarship funds.⁷ Considering the information in this letter and the information in the scholarship

⁶ An academic year is defined as full-time course of study taken for a period totaling at least nine months or for the equivalent of at least two semesters, two trimesters, or three quarters (34 C.F.R. § 386.4).

⁷ Scholarship recipients, must work two years for every one (academic) year of scholarship funding that was received (*See, Rehabilitation Long-Term Training Program: Scholarship Manual*, updated December 28, 2016, p. 2,

agreement, along with the absence of any evidence of an exit certification signed by the grantee and the Respondent, the Department has failed to establish the existence of the asserted debt.

In relation to the amount of the asserted debt, the evidence indicates that scholarship funds were awarded to the Respondent in the amount of \$12,500.00 but in the notice of intent to initiate administrative wage garnishment proceedings, the BFS identified the amount of the debt as \$10,307.02. The Department failed to provide any records that explained this discrepancy, except to informally indicate this account has been at Treasury since May 2017 and there have been collections on the account (*See*, footnote 1).

Despite being provided an opportunity after the Order Governing Proceedings was issued and an additional opportunity after the Order to Show Cause was issued, the Department has failed to meet its burden of proof required by 31 C.F.R. § 285.11(f)(8)(i) and 34 C.F.R. § 34.14(a)(1).

Because the Department has failed to establish the existence of the asserted debt or the amount of the debt, no further analysis is required.

V. Findings of Fact

1. The Department asserts the Respondent incurred a debt owed to the United States in the amount of \$12,500.00.
2. The debt reportedly arose out of an award to the Respondent as a scholarship associated with the Department's Rehabilitation Long-Term Training Program offered by a grantee of the Department.
3. On September 17, 2019, the United States Department of Treasury, Bureau of Fiscal Service issued a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings to collect a debt in the amount of \$10,307.02, which included interest, penalties, and costs.
4. The Department provided no evidence or formal explanation regarding the difference between the asserted debt and the amount of debt subject to the September 17, 2019 notice.
5. The Respondent timely requested a hearing in response to the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings.
6. The Department failed to establish that the grantee met the regulatory requirements when granting academic scholarship funds to the Respondent.
7. The Department's records failed to establish the existence or amount of asserted debt.

<https://www2.ed.gov/programs/rsatrain/payback-manual.pdf> (last visited October 13, 2020)).

VI. Conclusion and Order

The Department has failed to establish the existence or amount of the asserted debt identified by Fed Debt ID [redacted], and Department Account Number [redacted]. The U.S. Department of Education and the U.S. Department of Treasury, Bureau of Fiscal Service shall not initiate wage garnishment proceedings as indicated in the notice dated September 17, 2019. Since the Department has failed to establish the existence or amount of the asserted debt, the Department is prohibited from seeking repayment from the Respondent now or at any time in the future. To the extent any collections have been made pursuant to administrative wage garnishment, a refund must be issued to the Respondent. This decision is a final agency determination.

Date: October 15, 2020

Angela J. Miranda
Administrative Law Judge

SERVICE

Service completed in the manner indicated.

RM

[redacted]

By OES automatic email notice to: [\[redacted\]](#)

Renu Kapur

U.S. Department of Education

Office of Finance and Operations

Office of Financial Management

Accounts Receivable and Bank Management Division

400 Maryland Avenue, S.W.

Washington, DC 20202

By OES automatic email notice to: Renu.Kapur@ed.gov

Courtesy copy to:

RoseAnn Ashby

Teresa DeV Vaughn

U.S. Department of Education

Office of Special Education and Rehabilitative Services

Rehabilitation Services Administration

400 Maryland Avenue, S.W.

Washington, DC 20202

By email, delivery and read confirmation to: Roseann.Ashby@ed.gov and

Teresa.Dev Vaughn@ed.gov

U.S. Department of the Treasury

Attention: AWG Analyst

Administrative Wage Garnishment Liaison

Post Office Box 830794

Birmingham, AL 35283-0794

By email, delivery confirmation to: AWGhearingrequest@fiscal.treasury.gov