

IN THE MATTER OF Massachusetts School of Barbering and Men's Hairstyling,  
Respondent.

Docket No. 94-128-SP  
Student Financial Assistance Proceeding

Appearances: Peter S. Leyton, Esq., Ritzert & Leyton, of Fairfax, Virginia, for  
Massachusetts School of Barbering and Men's Hairstyling.

Howard D. Sorensen, Esq., Office of the General Counsel, Washington, D.C., for the  
Office of Student Financial Assistance Programs, United States Department of Education.

Before: Judge Ernest C. Canellos.

## **DECISION**

On June 10, 1994, the Office of Student Financial Assistance Programs (SFAP) of the United States Department of Education (ED) issued a **final program review determination** (FPRD) finding that Massachusetts School of Barbering and Men's Hairstyling (MSB) improperly disbursed \$65,400 in Pell Grant Program funds to incarcerated students in Massachusetts state prisons for award years 1990-91 through 1992-93, in violation of Title IV of the Higher Education Act of 1965, as amended (Title IV). See 20 U.S.C. § 1070 et seq.

The Pell Grant Program permits institutions to award grants to help eligible students meet the cost of their postsecondary education. [See footnote 1](#) / The amount of a Pell Grant that a student is eligible to receive is based, in part, on the student's cost of attendance at his or her postsecondary institution. Under the program, institutions may include, as a student's cost of attendance, "tuition and uniform compulsory fees normally charged a full-time student" and an allowance for "room and board costs, books, supplies, transportation, and miscellaneous expenses

incurred by the student." [See footnote 2](#) / To determine whether a student may be eligible for a Pell Grant, institutions must calculate the student's cost of attendance. In its determination of the cost of attendance for incarcerated students, MSB designated tuition and fee charges of \$2,400 and room and board, books, supplies, and other expense charges of \$1,800 and \$2,400 .

The Commonwealth of Massachusetts, Department of Corrections, contracted with MSB for the provision of barber/styling vocational education courses for the State's inmates. MSB offered the State's inmates a 1,000 hour barber/styling program taught at the State's prison facilities. Pursuant to an agreement with the State's Department of Corrections, the State agreed to pay MSB for the vocational education services the school provided to the State's inmates. According to MSB, since the school's standard tuition charge for its barber training program is \$6,000, the

school was not precluded by its contract with the State from charging inmates additional tuition expenses presumably not covered by the school's contract with the State.

According to SFAP, MSB included improper cost of attendance items in its calculation of Pell Grant awards for the institution's incarcerated students. In support of its position, SFAP shows that MSB granted a tuition waiver to students who were ineligible or otherwise unable to obtain Pell Grant funding. According to SFAP, MSB's practice of granting tuition waivers to students who were ineligible for Pell Grant funding demonstrates that MSB's incarcerated students were never required to pay MSB's tuition and fee charges. In that regard, SFAP determined that tuition was not charged to the incarcerated students and, since there was no bona fide tuition charged to the students, the tuition charge established by the institution to obtain Pell Grant awards for the incarcerated students was not a proper element of the institution's calculation of cost of attendance.

In addition, and for substantially similar reasons, SFAP argues that although MSB designated books, supplies, and room and board as elements of the institution's cost of attendance, no incarcerated student had in fact incurred these expenses. SFAP points out that the inmates could not have incurred room and board expenses since, for inmates incarcerated in the State's correctional facilities, those costs are covered by the taxpayers in Massachusetts. Consequently, SFAP argues that the costs should not have been included in the school's calculation of cost of attendance. Accordingly, the FPRD requires MSB to repay ED all Pell Grant Program funds disbursed for award years 1990-91 through 1992-93 .

In its defense, MSB argues that its cost of attendance calculation is permitted by the governing statutory provision of Title IV, 20 U.S.C. § 1070a-6(5). According to MSB, Section 1070a-6(5) defines "cost of attendance" as the tuition and fees *normally* charged a full time student at the institution and, as a consequence, permits institutions to use, as an element of its calculation of a student's cost of attendance, a tuition charge that is normally or customarily charged students, instead of only tuition expenses that are *actually* charged

students. In this respect, MSB contends that it may calculate the cost of attendance for its incarcerated students based, in part, on an amount for tuition and fees normally charged the school's non-incarcerated students. I do not agree.

The issue before me has been litigated previously in both *In the Matter of Microcomputer Technology Institute*, Dkt. No. 94-88-SA, U.S. Dep't of Educ. (May 5, 1995) (*Microcomputer*) and *In the Matter of Education Management Systems, Inc. d/b/a/ Chenier*, Dkt. No. 94-31-SA, U.S. Dep't of Educ. (June 22, 1994) (*Chenier*). Those cases stand for the unremarkable proposition that under Title IV, Congress did not intend for incarcerated students to be deemed eligible for Pell Grant funding regardless of whether the student actually incurred any obligation to pay for the expenses associated with enrollment and attendance at a postsecondary institution.

In the case at bar, the correctional facility provided housing, food, clothing, and other basic living necessities at no cost to the inmate. In that respect, it is abundantly clear that the institution's incarcerated students could not incur the living expenses associated with the cost of attendance calculation relied upon by MSB. Nor could MSB's tuition charge be considered an

appropriate element of the institution's calculation of cost of attendance. MSB leaves undisputed SFAP's claim that the institution never actually charged any student tuition, including cases where the student failed to qualify for Pell Grant funding. Indeed, MSB concedes that it waived its tuition charge for incarcerated students who were ineligible for Pell Grant funding. Consequently, I find that the relevant facts of the case before me and those in *Microcomputer and Chenier* are clearly indistinguishable. As such, the rule enunciated therein applies with equal force to the facts of this case. Accordingly, I find that MSB improperly included tuition and other fee expenses as elements of its calculation of cost of attendance for the school's incarcerated students and, in that regard, MSB improperly disbursed Pell Grant Program funds to those students.

#### ORDER

On the basis of the foregoing findings of fact and conclusions of law, it is HEREBY ORDERED that Massachusetts School of Barbering and Men's Hairstyling pay to the United States Department of Education the sum of \$65,400.00.

SO ORDERED:

Ernest C. Canellos  
Chief Judge

Issued: May 12, 1995  
Washington, D.C.

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*Footnote: 1 1 The Pell Grant Program has undergone significant changes subsequent to the award years at issue. For example, the Violent Crime and Law Enforcement Act of 1994, which applies to periods of enrollment beginning on or after September 13, 1994, amended the Higher Education Act of 1965 by prohibiting institutions from awarding Pell Grants to individuals who are incarcerated in any Federal or state penal institution. See Violent Crime and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 20411(a), 108 Stat. 1796, 1828.*

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*Footnote: 2 2 20 U.S.C. § 1070a-6(5) (1990).*