

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

In the Matter of

Docket No. 95-153-SP

**BOJACK LIMITED ACADEMY OF
BEAUTY CULTURE,**
Respondent.

Student Financial Assistance Proceeding

PCRN: 95301018

Appearances: Jack Morrissey, West Roxbury, Massachusetts, President, for Bojack Limited Academy of Beauty Culture

Alexandra Gil-Montero, Esq., Office of the General Counsel, United States Department of Education, Washington, D.C., for Student Financial Assistance Programs.

Before: Judge Richard F. O'Hair

DECISION

Bojack Limited Academy of Beauty Culture (Bojack) participates in the various student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1070 *et seq.* and 42 U.S.C. § 2751 *et seq.* These programs are administered by the office of Student Financial Assistance Programs (SFAP) of the United States Department of Education. On September 18, 1995, SFAP issued a Final Program Review Determination (FPRD) against Bojack alleging that Bojack failed to document the independent financial status of four students during the 1992-93 award year, in violation of 20 U.S.C. § 1087vv(d).

According to the applicable statute, independent status should be certified only if a student (1) is 24 years of age or older by December 31 of the award year; (2) is an orphan or ward of the court or was a ward of the court until the age of 18; (3) is a veteran of the Armed Forces of the United States; (4) is a graduate or professional student; (5) is a married individual; (6) has legal dependents other than a spouse; or (7) is a student for whom a financial aid

administrator makes a documented determination of independence by reason of other unusual circumstances. 20 U.S.C. § 1087vv. The process by which this latter determination is made is called the exercise of professional judgment.

Since a student's expected family contribution (statutory percentage of family financial resources which can be used to help finance the student's education) decreases if the student is certified as independent rather than dependent, Bojack's certification of independent status increased the amount awarded to each student in that category under the Federal Pell Grant Program. See 20 U.S.C. §§ 1087oo, pp (stating that awarded amount is determined by subtracting expected family contribution from maximum statutory amount). In addition, a student's independent status increases the amount awarded to each under the Federal Family Education Loans (FFEL) Program. See 20 U.S.C. § 1087kk (indicating that financial need is equal to (1) cost of school attendance, minus (2) expected family contribution, minus (3) estimated financial aid received under other programs). As a consequence of SFAP's finding that Bojack certified as independent Students #1, #2, #11, and #13 without the necessary supporting documentation, SFAP argues that Bojack should repay all Title IV aid disbursed to and on behalf of these students.

As the FPRD indicates, Bojack's financial aid administrator exercised her professional judgment to override the students' dependency status; however, the challenged student files do not contain the documentation necessary to establish independent certification. In order to support such certification, the institution was responsible for providing

records to support this decision, such as the students' or parents' income tax returns or affidavits from the parents or guardians indicating that the students were not claimed as dependents for the two years preceding the 1992-93 award year. 20 U.S.C. § 1087vv(d)(4). On appeal of the FPRD, Bojack submitted a letter dated December 12, 1995, stating that its financial aid administrator, Darlene Filleti, authorized the status override based on "professional judgment." This letter, however, is not sufficient documentation to fulfill the requirements of the statute. While it asserts "professional judgment," the letter does not explain the basis for the exercise of that judgment. Although Bojack's appeal states that the financial aid administrator instructed the students to obtain the necessary tax returns, this mere instruction is also not sufficient. In the absence of these records, the financial aid administrator should not have granted these students independent status. See *In Re Phillips Junior College*, Docket No. 93-31-SP, U.S. Dep't of Educ. (November 18, 1994) (stating that failure to document independent status of students violates 20 U.S.C. § 1087vv(d)).

Furthermore, I find Bojack's assertion that independent financial status does not affect Stafford Loan eligibility to be without merit. As financial status affects a student's eligibility to receive any federal financial aid, the certification of a student's independent status impacts both Pell Grant and FFEL eligibility.

I agree with Bojack's assertion that "[t]he intent of the law . . . was to provide some flexibility for special circumstances." It is these special circumstances, however, that Bojack has

failed to document. If the challenged student files had contained documentation supporting the financial aid administrator's use of professional judgment, Bojack would not be liable for the repayment of Title IV funds. However, as Bojack has failed to produce any documentation regarding the students' financial status, the institution must repay all Title IV financial aid disbursed to and on behalf of these students.

FINDING

In the 1992-93 award year, the financial aid administrator for Bojack Limited Academy of Beauty Culture failed to document the independent status of four students (Students #1, #2, #11, and #13).

ORDER

On the basis of the foregoing, it is hereby ORDERED that Bojack Limited Academy of Beauty Culture repay to the appropriate lenders the outstanding loan balances on \$9,187 of Federal Family Education Loan funds, and to the Department of Education \$8,400 in Federal Pell Grant funds.

Judge Richard F. O'Hair

Dated: May 31, 1996

SERVICE

A copy of the attached initial decision was sent by certified mail, return receipt requested to the following:

Jack Morrissey
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