



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

In the Matter of

Docket No. 04-26-SP

DAVENPORT BARBER STYLING
COLLEGE,

Federal Student
Aid Proceeding

Respondent.

PRCN: 200340721896

DECISION

Appearances: Dorris Coppinger, Midlothian, Texas, for Davenport Barber Styling College.

Jennifer L. Woodward, Esq., of the Office of the General Counsel, United States Department of Education, Washington, D.C., for Federal Student Assistance

Before: Chief Administrative Law Judge Allan C. Lewis

Davenport Barber Styling College (Davenport) is a proprietary school that participates in several programs under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* It appeals a final program review determination issued on March 24, 2004, for the award years 2000/01, 2001/02, and 2002/03. The U.S. Department of Education's office of Federal Student Aid (FSA) determined that Davenport failed to verify various data components used to compute the expected family contribution (EFC), a mechanism that determines the relative need of a student for financial assistance. As a result, Davenport was assessed liabilities for 26 students in the total amount of \$77,888 in Pell Grant funds and \$11,284 in estimated actual losses for Federal Family Education Loans.

On appeal, Davenport advances two arguments. First, it argues that FSA erred by requiring Davenport to verify the applications of all its students during each of the award years rather than limiting the verification process to a maximum of 30 percent of its students as prescribed by law. Second, it maintains that, in any event, verification was properly performed on most of the 26 students cited by FSA. Based upon the findings of fact and conclusions of law

infra, it is concluded that FSA may recover \$56,950 in Pell Grant funds and \$7,349 in estimated actual losses for Federal Family Education Loans.

Under 34 C.F.R. § 668.54 (2000), an institution must verify the application information of a student seeking to participate in a federal student aid program if that student is selected by the Secretary for verification or if the institution has reason to believe that any information contained on the application is incorrect. However, an institution is not required to verify the applications of more than 30 percent of its total number of applicants for assistance under the federal programs in an award year. 34 C.F.R. § 668.54(a)(2)(i). The 30 percent figure may only consist of applicants selected by the Secretary for verification. 34 C.F.R. § 668.54(a)(2)(ii).

In the instant case, FSA conducted a program review for three award years -- 2000/01, 2001/02, and 2002/03. A random sample of student files during these years revealed a significant number of files in which the verification was incomplete. As a result of this incidence of error, the program review of August 21, 2003, ordered Davenport--

to review all student files for the last three award years and identify all recipients for whom verification was required. Verification must be completed and discrepant information must be clarified. As appropriate, you must recalculate a student's EFC based on revised data and identify any incorrect awards.

Davenport interpreted this order as requiring the review of the files of all students in each year. It, thereupon, proceeded to begin to review 31 files for 2000/01, 32 files for 2001/02, and 34 files for 2002/03. Over the next five months, Davenport gathered information and materials in order to respond to the verification request by FSA. In the end, Davenport submitted a response that, in some instances, satisfied the verification requirement and, in other instances, provided a partial or no response. Ultimately, FSA concluded its evaluation of the materials submitted and issued a final program review determination on March 24, 2004, in which FSA assessed liabilities due to discrepant information for six students in award year 2000/01, nine students in award year 2001/02, and 11 students in award year 2002/03.

On appeal, Davenport argues that FSA ordered a review of all student files in each year and that such an order violated the 30 percent limitation of 34 C.F.R. § 668.54(a)(2)(i). FSA responds that Davenport misread the order. In FSA's view, the phrase "to review all student files" is narrowed or limited by the subsequent clause to "identify all recipients for whom verification was required" to require only the review of the files selected for verification.

Initially, FSA's order is poorly written and should be revised in future letters.¹ When the three sentences of the order are read together, it is apparent, though not without some doubt, that the school should review only those student files for which verification was previously

¹ See *In Re Fisk University*, Dkt. No. 94-216-SP, U.S. Dep't of Education (Oct. 5, 1995) (school attempted to comply with a similar order by FSA requiring a file review of all students for two years before it discovered and argued that the request was limited by the 30% statutory limitation).

requested. The more important issue, however, is whether the 30 percent limitation on verification has been exceeded. In this determination, the students' institutional student information records (ISIRs) are essential because they indicate whether a student was selected for verification by FSA during the application process. A student selected for verification will have a capital "Y," meaning yes, printed following the query "Verification Flag" on the third page of his/her ISIR. A student not selected for verification will have a "N," meaning no, printed next to the query.

If the record in this case contained the ISIRs of all the students, it would be an easy matter to ascertain whether or to what extent the 30 percent limitation was exceeded. Here, the record is very limited and does not provide this information. Of the 31 students in the award year 2000/01, the record contains the ISIRs of only three students or 10 percent of the class. For the award year 2001/02, the record contains the ISIRs for six of the 32 students or 19 percent of this class. For the award year, 2002/03, the record contains the ISIRs of six of the 34 students or 18 percent of the class. All of the above ISIRs indicate that they were selected for verification. The record does not contain the ISIRs of the remaining students. Hence, it cannot be determined whether these students had their ISIRs selected for verification. Because Davenport bears the burden of proof on this matter, Davenport only established that less than 30 percent of the students were selected for verification in each of the three award years. Therefore, the 30 percent limitation imposed under 34 C.F.R. § 668.54(a)(2)(i) was not violated in each award year.

Next, Davenport addresses the 26 students (students #101 through #126) whose files were cited for incomplete verification in the final program review determination. For 11 of the 26 students, Davenport concedes the proposed liabilities because it lacks the information to verify one or more of the components used in calculating the EFC for the student.² For five of the 26 students, FSA concedes its claim.³ As a result, this leaves 10 student files that are contested between the parties regarding the sufficiency of the verification.⁴ They will be addressed in numerical order.

Award Year 2000/01

Student 103. On audit, FSA identified two problems regarding student 103, a wife who lived with her husband and two children, and was applying for admission to the school. The first problem was a perceived discrepancy in the number of members of the student's household. The student's ISIR of September, 2000, reported four in the household while a worksheet, prepared some three years later, purportedly identifies only three members in the household.

² These students are #101, 102, 104, 109, 113, 114, 119, 121, 122, 125, and 126. The liabilities for these students totals \$35,525 in Pell Grant funds and \$4,718 in estimated actual losses for the loans under the Federal Family Education Loan program.

³ These students are #110, 116, 117, 118, and 123.

⁴ These students are #103, 105, 106, 107, 108, 111, 112, 115, 120, and 124.

The size of the student's household is four. This number was reported in her student application and reaffirmed by a subsequent note from the student. For some unknown reason, FSA ignored the student's 1999 tax return that indicates a household size of four. Given this overwhelming evidence, the worksheet is meaningless and the matter is considered verified.⁵

The second problem relates to the professional judgment exercised by the financial aid administrator who revised two components used to determine student's EFC for the award year 2000. In the first adjustment, the administrator reduced the adjusted gross income component from the 1999 figure of \$40,799 to \$32,725, an amount of approximately \$8,000. The second adjustment was a token \$200 increase in the tax paid component.

The primary concern of FSA's auditor was the "[p]rofessional statement doesn't relate to any of the changes made to the ISIR – this is unacceptable." On brief, FSA questions the absence of an explanation for the revised adjusted gross income figure selected by the financial aid administrator.

Initially, the financial aid administrator is granted discretionary authority under 20 U.S.C. § 1087tt (2000) to make adjustments to data items used in calculating an EFC when special circumstances exist—

[n]othing in this part shall be interpreted as limiting the authority of the financial aid administrator, on the basis of adequate documentation, to make adjustments on a case-by-case basis to . . . the values of the data items required to calculate the expected student . . . contribution . . . to allow for treatment of an individual eligible applicant with special circumstances. . . . Special circumstance may include . . . recent unemployment of a family member . . . Adequate documentation for such adjustments shall substantiate such special circumstances of individual students.

Here, there was adequate documentation that the student's adjusted gross income figure for 1999 included more than \$12,000 of income attributable to unemployment compensation and to wages from the student's former job and that this income would not be available to the student in 2000. There was also adequate documentation to the effect that the financial aid administrator considered these facts and, in the exercise of her judgment, determined that a \$8,000 reduction in the adjusted gross income was appropriate in calculating the student's EFC. Hence, the professional statement ties the student's loss of income to the adjusted gross income figure as determined by the financial aid administrator.

In the tribunal's view, adequate documentation for an adjustment under Section 10877tt is more than satisfied in this case. The facts provide a dollar spectrum, \$12,000 in this case,

⁵ It is readily apparent that the student believed the household size information in the worksheet referred to the dependent children in the household since she entered information concerning her dependents and did enter any information concerning herself or her spouse.

within which the financial aid administrator could exercise her judgment. So long as the financial aid administrator acted within this spectrum, which she did, the intent of Section 1087tt is satisfied and there was no abuse of her discretion. Hence, a requirement to articulate precisely the thought process by which a financial aid administrator determines the exact amount of the adjustment, as urged by FSA, serves no legitimate purpose in furthering the financial aid programs or the compliance therewith.

In view of the above, it is determined that there is adequate documentation of the facts and the exercise of the professional judgment regarding this student. It is also determined that the financial aid administrator exercised her professional judgment in a proper manner. Therefore, Davenport is not liable for the repayment of the Pell Grant disbursed to student 103.

Student 105. At this juncture, the sole, purported deficiency is that the student's statement reported income of \$12,000 for 1999 while the income component used in computing his EFC in the ISIR, dated September 7, 2000, was zero. On brief, FSA examined the available information and concluded that the documentation was inadequate to support the exercise of professional judgment.

According to the August 30, 2000, note by the student, written about one week before the ISIR was issued, he worked in Texas in 1999 and earned \$12,000. His job was terminated and he moved to Illinois to live with his grandmother. He will be attending Davenport full time in 2000, will not be working, and will be supported by his grandmother during his schooling.

According to the professional judgment form, the financial aid administrator reduced the income component in the EFC calculation from \$12,000, the student's income in 1999, to zero for the year 2000 due to special circumstances, namely the recent unemployment of the student and the prospect of continued unemployment while he attended school on a full-time basis in 2000. This is sufficient documentation to support the exercise of professional judgment in this case and Davenport is not liable for the \$1,888 of Pell Grant funds disbursed to this student.

Student 106. There is one verification problem concerning student 106. The worksheet of September 30, 2001, indicates three in the household with one in college while the ISIR of March 12, 2001, indicates three in the household but with two in college.

While Davenport submitted additional information, FSA argues that the additional information further compounds the problem as it provides yet more conflicting information concerning the household status. The tribunal agrees. The number of members in the household attending college is in conflict and remains unresolved. Accordingly, the verification is not complete and Davenport is liable for \$3,300 of Pell Grant funds disbursed to this student.

Award Year 2001/02

Student 107. On audit, FSA focused on two problems. First, the EFC in the ISIR dated June 22, 2001, was computed without any consideration of \$5,200 of child support that the student disclosed in an undated verification worksheet. Second, the ISIR indicated that the student filed a tax return for the year 2000, yet the undated verification worksheet indicated that none was filed.

While Davenport concedes the student's EFC was computed without the inclusion of \$5,200 in child support, it urges that no harm has occurred because this factor did not change the student's eligibility for a Pell Grant. FSA responds that Davenport bears the burden of persuasion in this proceeding and has failed to satisfy that burden by failing to provide a recalculation of the EFC to support its factual assertion.

The verification process is used to ensure the student's eligibility for a Pell Grant as well as the amount of his or her entitlement thereto. Davenport's failure to submit a recomputation leaves unanswered the extent to which the amount of Pell Grant entitlement would be reduced by the inclusion of the child support data in the computation of the EFC. While such a showing would have reduced the amount of actual damages in this instance, the absence of the recomputation makes this determination impossible and requires a finding that FSA suffered a loss equal to the full amount of Pell funds disbursed to this student. Accordingly, FSA may recover \$1,875 in Pell funds disbursed to this student.

Student 108. On audit, FSA raised two problems. First, there was no verification worksheet and second, there was no 2000 tax return in the student's file. FSA proposed an assessment of \$3,750 for the Pell funds disbursed during the 2001/02 year.

A tax return provides verification of several data items used in the computation of the EFC such as the student's adjusted gross income, the amount of tax paid, and the number of exemptions taken on the return. While Davenport offers a statement from the Internal Revenue Service that the student did not file a return for the year 2000, this fact does not excuse Davenport from verifying by other means the student's income and number of dependents. Accordingly, the verification remains incomplete and Davenport is liable for \$3,750 of Pell funds disbursed to this student.

Student 111. On audit, FSA found the verification incomplete because there was no tax return for the year 2000 in the file. It proposed an assessment of \$3,500 for the Pell funds disbursed during the 2001/2002 year.

Davenport raises two points. First, it asserts that this student was not an individual selected for verification since there were no discrepancies identified in the student's file and there was no reason for FSA or the school to believe the student's information was incorrect. Second, Davenport indicates that it provided the tax return information with its brief.

FSA responds that the student was indeed selected for verification. Selection is noted on the ISIR by a “Y” following the query “Verification Flag.” This student’s ISIR was so noted. Hence, the student was selected for verification.

Next, the student was awarded a Pell Grant in the amount of \$3,500 based upon an EFC of 273 as reflected in the ISIR of August 30, 2001. The auditor sought the student’s federal income tax return for the year 2000 in order to verify three numbers used in computing the student’s EFC, namely, the student’s adjusted gross income, the number of her dependents, and the amount of tax paid. Apparently, Davenport could not obtain the student’s income tax return. It obtained, instead, a statement prepared by the Internal Revenue Service that detailed the student’s reported adjusted gross income, her exemptions, and the amount of tax paid. FSA accepts this statement as a verification of these three items.

After reviewing the statement prepared by the Internal Revenue Service, FSA now asserts that Davenport failed to explain and document the inconsistency between the adjusted gross income of \$7,186 reported by the student in her tax return and the significantly lesser figure of \$3,500 used to compute the student’s EFC and, ultimately, the amount of the student’s Pell Grant award. The downward modification of the adjusted gross income figure resulted more than likely from the exercise of professional judgment by the financial aid administrator. The record contains, however, no documents to support the use of professional judgment or to otherwise explain and justify the modification. Accordingly, it is determined that Davenport failed to justify the reduction in the student’s adjusted gross income.

The remaining issue is the amount of damages sustained by FSA. This is a proceeding “to assess liability for actual harm.” In re Christian Brothers University, Dkt. No. 96-4-SP, U.S. Dep’t of Education (Jan. 8, 1997), at 7. A recovery under Subpart H is not “penal,” rather it is in the nature of an effort “to collect a debt . . . for the amount of funds misused.” In re Macomb Community College, Dkt. No. 91-80-SP, U.S. Dep’t of Education (May 5, 1993) at 3. In Macomb Community College, the tribunal reduced the liability assessed the school for similar violations where the school was able to document that the student was eligible to receive all or a portion of the awarded Title IV funds.

In the instant case, the actual harm or damage suffered by FSA is not \$3,500, the amount of the Pell Grant disbursed to this student as urged by FSA. Rather, the damage is the amount of additional Pell Grant funds the student obtained by utilizing the unsubstantiated adjusted gross income figure of \$3,500 instead of her actual adjusted gross income of \$7,138. Here, the amount of harm is \$1,600 which represents the difference between her Pell distribution of \$3,500 as determined by using her unsubstantiated adjusted gross income and her Pell entitlement of \$1,900 as determined by using her actual adjusted gross income.⁶

⁶ The \$3,500 Pell Grant was awarded based upon an EFC of 273 as reflected in the August 30, 2001 ISIR, the student’s full time status, and a cost of attendance in excess of \$3,750. There is a second ISIR, dated June 19, 2001. It is identical to the August 30th ISIR in all pertinent aspects except that it uses \$7,000 as her adjusted gross income figure. The June 19th ISIR produced an EFC of 1801. With this EFC, status as a full time student, and a cost of attendance in excess of

This determination of the amount of actual harm or damage is consistent with FSA's instructions in the program review. Davenport was to recompute, when appropriate, the student's EFC and determine the amount of its liability based upon the difference between the actual disbursement and the correct disbursement. Thus, FSA sought a recovery equal only to extent of its actual damage when that amount could be ascertained. Accordingly, FSA may recover \$1,600 in Pell funds disbursed to this student.

Student 112. A Pell Grant in the amount of \$3,750 was paid to this student based upon an ISIR, dated June 22, 2001, that produced an EFC of zero. A prior ISIR, dated June 19, 2001, had an EFC of 5,318. On audit, FSA questioned the reduction in the EFC and, more specifically, that the more recent ISIR was incomplete as it was missing the second page that contained financial information such as adjusted gross income, marital status, and number of dependents.

At this juncture, Davenport has still not produced the second page of the June 22nd ISIR. Davenport provided additional documentation – the student's tax return, a student statement attesting to a financial change in circumstance, and a professional judgment form that revised downward the student's estimate income. However, this documentation does not provide the actual numbers used to compute the EFC in the June 22nd ISIR. Without these numbers from page two, verification cannot be performed. Accordingly, Davenport is liable for \$3,750 in Pell Grant funds disbursed to this student.

Student 115. On audit, FSA determined that Davenport's verification effort left one matter unresolved, namely, whether this student's household had three members in college as indicated in the ISIR of July 1, 2002, or one member in college, Student 115, as reflected in the verification worksheet of July 10, 2002.

On appeal, Davenport argues that this student was not one of the student's selected for verification and, therefore, should be excluded from the audit determination. Like student 111, *supra*, student 115's ISIR was selected for verification as indicated by the "Y" succeeding the query "Verification Flag." Hence, Davenport's argument is without merit.

In addition, Davenport did not submit any evidence on appeal that resolved the number of students in the household that were attending college. Thus, the verification problem cited in the determination remains unresolved. FSA may recover the Pell Grant funds disbursed to this student in the amount of \$1,500.

\$3,750, the Pell Grant entitlement is \$1,900 in the award year 2001/02. See 2001-2002 Federal Pell Grant Program Payment and Disbursement Schedules – Regular and Alternate (December 2000), available at <http://ifap.ed.gov/dpceletters/PellS0003.html>.

Award Year 2002/2003

Student 120. This student was disbursed \$3,650 in Pell Grant funds and received loans in the total amount of \$6,265 under the Federal Family Education Loan program. The audit revealed that the student's 1040A federal income tax return for 2001 was missing page two of that form. As a consequence, the auditor determined that at least one data component in the EFC was not verifiable, i.e. the amount of federal income taxes paid.

On appeal, Davenport submitted page two of the student's state income tax return but that page does not resolve the verification problem concerning the federal income tax return. Accordingly, verification still remains incomplete and Davenport is liable for the disbursement of \$3,650 of Pell Grant funds and for an estimated actual loss of \$2,631 pertaining to the loan under the Federal Family Education Loan program.

Student 124. On audit, FSA determined that the ISIR of August 15, 2002, was based upon a household size of six and resulted in a zero EFC. An undated verification worksheet reported a household size of three and, thus, the conflict. As a result, FSA seeks to recover \$2,000 in Pell funds disbursed to this student.

On appeal, Davenport asserts that the household size of six was the result of a data entry error and that the correct size of the household was three. It maintains, also, that a reduction in the size of the household from six to three would have no effect on the student's eligibility for the amount of Pell Grant funds disbursed to the student. Hence, regardless of the household size used as a data item in the computation of the EFC, FSA suffers no harm or damage.

FSA rejects the data entry error explanation and correctly so. The source of the number of members in the household in the ISIR is from the figure inserted by the student in her application for federal student aid. In this case, the student put a figure of six in that category. Thus, Davenport did not make an error that caused the figure six to appear in the ISIR. Rather, the student caused the error.

The object of the verification process is to correct errors. Here, the correct number of members in the student's household is three. This number reflects the student and her two children, ages three and four. The undated worksheet and the student's 1040A federal income tax return provide more than adequate verification of this data item.

Even though the size of the household must be reduced from six to three, the effect on the student's EFC will not be substantial given that her adjusted gross income was less than \$4,000. However, the amount of the Pell Grant to which she was entitled is not ascertainable with this record. As such, it requires a finding that FSA suffered a loss equal to the full amount of Pell funds disbursed to this student. Accordingly, FSA may recover \$2,000 in Pell funds disbursed to this student.

In summary, Davenport conceded liability for its Pell Grant disbursements and for estimated actual losses on loans made under the Federal Family Education Loan program with

respect to Students #101, 102, 104, 109, 113, 114, 119, 121, 122, 125, and 126. This concession represents \$35,525 in Pell Grant funds and \$4,718 in estimated actual losses for the loans. It is determined in this proceeding that Davenport is also liable for its Pell Grant disbursements and for estimated actual losses for loans with respect to Students #106, 107, 108, 111 to the extent of \$1,600, 112, 115, 120, and 124. The total amounts of liability under the matters contested are \$21,425 in Pell Grant funds and \$2,631 in estimated actual losses.

ORDER

On the basis of the foregoing findings of fact and conclusions of law, and the proceedings herein, it is hereby ORDERED that Davenport Barber Styling College pay to the United States Department of Education the sum of \$56,950 for improperly disbursed Pell Grant funds and \$7,349 for estimated actual losses incurred due to improperly disbursed funds under the Federal Family Education Loans program.

Allan C. Lewis
Chief Administrative Law Judge

Dated: October 28, 2005

SERVICE

A copy of the attached document was sent on October 28, 2005, by certified mail, return receipt requested to the following:

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