



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, DC 20202

In the Matter of

Docket No. 19-21-WA

LS

Waiver Proceedings

Debt ID: 90851270393

Respondent.

DECISION DENYING WAIVER

Respondent has filed an overpayment waiver request seeking a waiver of a debt identified by Debt ID 90851270393, constituting a total debt of \$1,760.02. The record indicates this debt accrued in pay periods 201818, 201819, and 201823 through 201905. The debt accrued because staff from the Department's Office of Human Resources erroneously cancelled Respondent's health insurance benefits, then reenrolled Respondent but failed to deduct Respondent's premiums during the 13 pay periods in question. Respondent was aware of the overpayments and was in regular contact with HR staff throughout the period in question, repeatedly requesting updates on when the problem would be corrected.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to the Office of Hearings and Appeals (OHA) which, thereby, exercises authority and jurisdiction on behalf of the Secretary of Education to waive claims of the United States against a former or current employee of the Department. The undersigned is the authorized Waiver Official who has been assigned this matter by OHA. Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.

DISCUSSION

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.¹ Among other things, that notice must explain the "origin, nature and amount of the overpayment."² It must also include Government records on which the overpayment determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.³ In subsequent filings, Respondent

¹ 34 C.F.R. § 32.3.

² *Id.* § 32.3(a).

³ *Id.* § 32.3(g).

demonstrated an understanding of the nature of the debt. Accordingly, I conclude Respondent had sufficient notice of the debt to file a waiver request, and I will proceed with my analysis of that request.

Waiver of an erroneous salary payment is an equitable remedy. Determining whether waiver is appropriate requires consideration of two factors: (1) the fault standard: whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) the equity standard: whether Respondent can show that it is against equity and good conscience for the Federal government to recover the overpayment.⁴

First, regarding the fault standard, Respondent asserts that the debt arose from the Department's failure to deduct premiums for Respondent's health benefits.⁵ Email exchanges attached by Respondent show that she recognized the erroneous lack of deductions as early as November 2018 and acted in good faith by communicating with Department staff. Nevertheless, the lack of deductions inexplicably persisted through Pay Period 5 in 2019. Based on the evidence presented, I conclude that Respondent meets the fault standard.

Second, I turn to the equity standard. Respondent makes no assertion that repayment of the debt would be inequitable. Clearly the overpayment in this case is the result of the Department's administrative error, but the general rule requires the employee to repay the debt unless doing so would be inequitable.⁶ The inequitable nature of repayment is often shown through the potential hardship faced by the employee requesting a waiver. However, in this case Respondent does not present evidence that repayment of the debt will create a hardship. "There is no doubt that repayment of any sum may be inconvenient and unplanned in terms of any household budget, but that is not tantamount to showing a financial burden such that the equities call for a waiver."⁷ Respondent does not demonstrate why repayment would be inequitable, nor does the record clearly show it. In the absence of such a showing, Respondent does not satisfy the second factor and there is no ground for granting a waiver. Accordingly, Respondent's request for a waiver is denied. This decision constitutes a final agency action.

ORDER

Pursuant to the authority at 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the debt to the United States Department of Education captioned Debt ID 90851270393 is **HEREBY DENIED**. Respondent may challenge the validity of the debt, or argue that an involuntary payment schedule will cause extreme financial hardship, by filing a written request for a pre-offset hearing within 10 days of receipt of this decision.⁸

⁴ 5 U.S.C. § 5584(a) (2012); *In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005) at 3, 5.

⁵ Waiver Request, p. 1.

⁶ See *In the Matter of R*, Dkt. No. 14-54-WA, U.S. Dep't of Educ. (Jan. 12, 2015) at 4 (citing *In re Danae*, Dkt. No. 13-28-WA, U.S. Dep't of Educ. (Oct. 24, 2013) at 6; *In re Sarah*, 11-07-WA, Dkt. No. 11-07-WA, U.S. Dep't of Educ. (May 5, 2011) at 2-3).

⁷ *In the Matter of E*, Dkt. No. 15-07-WA, U.S. Dep't of Educ. (Mar. 31, 2015) at 6 (quoting *In re April*, Dkt. No. 12-23-WA, U.S. Dep't of Educ. (July 11, 2012) at 9).

⁸ 34 C.F.R. § 32.6(b).

So ordered this 30th day of May 2019.

_____/s/_____
Charles S. Yordy III
Waiver Official