



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 19-83-WA**

**M,**

Salary Overpayment  
Waiver Matter

Debt ID: 93231740495

Respondent.

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**DECISION DENYING WAIVER REQUEST**

On December 17, 2019, the Office of Hearings and Appeals (OHA) received a request for a waiver of a debt from Respondent, a U.S. Department of Education (Department) employee, in the above-captioned proceedings. Respondent's waiver request comes in response to the notice of a debt resulting from an overpayment of salary to Respondent in the total amount of **\$1,571.22**. This overpayment resulted from a failure by the Department to deduct Respondent's share of health insurance premiums from her pay over fourteen pay periods between April and October 2019.

On January 23, 2020, an Order Governing Proceedings was sent via electronic mail and certified mail in response to Respondent's waiver request. The Order Governing Proceedings required Respondent to file any additional documentation on or before February 7, 2020. After no response was filed, I issued an Order to Show Cause, providing Respondent to submit any additional filings on or before February 19, 2020. The Order indicated that the record would be closed on that date and the matter would be decided on what had been submitted. On February 12, 2020, Respondent filed a one-page statement, but has submitted no other filings. At my request, the Department provided additional necessary information; specifically, Respondent's leave and earning statements from the pay periods at issue.

Having reviewed the submitted information, I conclude that Respondent failed to meet her burden of showing she is without "fault" as the term is used in these proceedings. Accordingly, Respondent's request for a waiver is denied.

In a waiver proceeding, the debtor does not challenge<sup>1</sup> the validity of the debt, but rather argues that she should not be required to repay the debt because of equitable considerations as

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<sup>1</sup> Refraining from challenging the validity of the debt for the purposes of a waiver proceeding does not preclude Respondent from raising that challenge in a separate pre-offset hearing.

well as because there is no indication of fraud, misrepresentation, fault, or lack of good faith by Respondent or anyone else having an interest in obtaining the waiver.<sup>2</sup> When requesting a waiver, the debtor is expected to: (1) explain the circumstances of the overpayment; (2) state why a waiver should be granted; (3) indicate what steps, if any, the debtor took to bring the matter to the attention of the appropriate official or supervisor and the agency's response; and (4) identify all the facts and documents that support the debtor's position that a waiver should be granted. This decision constitutes a final agency decision.

## JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to OHA,<sup>3</sup> which, thereby, exercises waiver authority and jurisdiction on behalf of the Secretary of Education to waive<sup>4</sup> claims of the United States against a former or current employee of the Department.<sup>5</sup> The undersigned is the authorized Waiver Official who has been assigned this matter by OHA.<sup>6</sup> Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.

## PROCEDURAL HISTORY

In March 2019, Respondent submitted a health benefits election form, electing to enroll in a Federal Employees Health Benefits or FEHB group health insurance program provided by

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<sup>2</sup> Under waiver decisions issued by the Comptroller General interpreting 5 U.S.C. § 5584, "pay" has been held to include "nonpay" or nonsalary compensation, which covers recruitment bonuses, accrual of annual leave, health and life insurance premiums, retention allowances, and all forms of remuneration in addition to salary. *See In re T*, Dkt. 13-40-WA (Dec. 5, 2013) at 2 n.5.

<sup>3</sup> The Department's policy is set forth in the U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised Jan. 2012).

<sup>4</sup> *Waiver* is defined as "the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as [provided] by 5 U.S.C. 5584 . . . or any other law." 5 C.F.R. § 550.1103 (2014).

<sup>5</sup> *See* General Accounting Office Act of 1996, Pub. L. No. 104-316, Title I, § 103(d), Oct. 19, 1996, 110 Stat. 3828 (codified at 5 U.S.C. § 5584) (the Waiver Statute). The law of debt collection is extensive. *See, e.g., In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 1 & n. 1 (setting forth, more fully, the statutory framework governing salary overpayment debt collection); *see also* 5 U.S.C. § 5514 (2012) and 31 U.S.C. § 3716 (2012) (these statutory sections constitute significant provisions of the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Apr. 26, 1996, 110 Stat. 1321). The Department's overpayment procedures may be found on the Office of Hearings & Appeals website at: <http://oha.ed.gov/overpayments.html>.

<sup>6</sup> *See* 5 U.S.C. § 5584(b) (2012) (noting the authority held by the authorized official in waiver cases).

Blue Cross and Blue Shield (BCBS). On April 8, 2019, Respondent received an email from the Department notifying her that her form had been accepted and approved. The next day, on April 9, 2019, Respondent received a forward of an email between the Department Human Resources specialists indicating that her premiums for her insurance coverage would be deducted from her next pay check and that the benefits group within the Human Resources Office had been notified to process her health insurance election. And, on the day after, April 10, 2019, Respondent received an email from the Acting Chief of the office that included the benefits group, notifying Respondent that her health insurance election form had been processed and she should expect a notification from the eOPF online personnel system. On April 12, 2019, Respondent received a temporary Member ID card from BCBS effective March 31, 2019 and some time after that she received her permanent Member ID card with the same effective date. In, at least, April, May, and October 2019, Respondent used her health insurance for medical visits, and in July and September 2019, received pre-authorizations from BCBS that prescription medication would be covered under her health insurance.

In a letter dated October 14, 2019, BCBS notified Respondent that upon reviewing enrollment records, the information provided by the Department indicated that Respondent was not enrolled in the BCBS plan. BCBS gave Respondent 31 days to provide documentation of current and valid enrollment in the BCBS plan or be disenrolled from the plan. On October 28, 2019, Respondent, members of Respondent's office's human resources team and the Department's Human Resources Office exchanged emails. Among the emails was an email from Respondent to the branch chief of the Department's benefits office in which Respondent notes that while her election form was completed in March 2019, and she had been receiving benefits since then, her Leave and Earnings Statements did not show deductions for the benefits. That same day, the benefits group branch chief indicated that her team was working to resolve the issue. In a letter dated the next day, October 29, 2019, Respondent informed BCBS that she was working with the Department's Human Resources office to remedy the issues and provided them with a copy of her Health Benefits Election form.

In a letter dated November 18, 2019, BCBS notified Respondent that it had not received the necessary documentation and her coverage in the program had been terminated. Respondent has indicated that she has incurred additional medical costs resulting from the lapse in health insurance coverage when her benefits were terminated.

Respondent asserts that that she had no reason to recognize that she incurred the debt and that it would be against equity and good conscience to collect it. Specifically, Respondent asserts that due to the facts that: (1) she received confirmation from Department employees that she was enrolled in the FEHB programs; (2) she was receiving health benefits and coverage; and (3) she had no reason to believe there was an error in her health coverage or premium deductions, it would be inequitable because the error was on the part of the Department.

## DISCUSSION

Under the Federal Employees Health Benefits Act of 1959 (FEHBA), Congress established a comprehensive employer-sponsored group health insurance program (known as the Federal Employees Health Benefits or FEHB) for Federal employees. Under the law, the

responsibility to pay premiums is shared by the employee and the government, with each paying their share each pay period.<sup>7</sup> An employee's contribution to her health care coverage is disclosed as a deduction on her leave and earnings statements.<sup>8</sup> In this matter, the overpayment in salary arose from a failure to deduct Respondent's contributions from pay periods 6 through 25 in fiscal year 2017.

Determining whether waiver is appropriate in this matter requires consideration of two factors: (1) whether Respondent can prove that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, known as the "fault standard;" and (2) whether Respondent can show that it is against equity and good conscience for the Federal government to recover the overpayment, known as the "equity standard."<sup>9</sup>

It is well established that "no employee has a right to pay that he or she obtains as a result of overpayments."<sup>10</sup> As we have stated in the past, a "salary overpayments often, if not always, involve some type of error by the agency," but "the administrative error by the government cannot, itself, entitle an employee to waiver."<sup>11</sup> Rather, the fault standard imposes a duty on Department employees to seek correction of the erroneous payment regardless of the government's mistake."<sup>12</sup> As part of this fault standard, a respondent must also show that she did not "accept the erroneous salary payment, notwithstanding that the employee knew or should have known the payment to be erroneous."<sup>13</sup> Once an employee knows or should know of a salary overpayment, the employee is required to set aside money to repay the overpayment of salary.<sup>14</sup>

Our decision in *In re Spencer* explained the fault standard in more detail. The standard is "examined in the context of an employee's duty to prevent or discover mistakes and errors in salary payments when doing so is feasible."<sup>15</sup> This duty aligns with "the employee's particular capacity to know of the antecedents that may give rise to changes in pay," and "the reality that the employee is often in the best position to recognize a mistake in pay; that is, not only is the

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<sup>7</sup> 5 U.S.C. § 8906(c).

<sup>8</sup> *In re Eric*, Dkt. No. 10-06-WA, U.S. Dep't of Educ. (Mar. 31, 2011) at 2.

<sup>9</sup> *See e.g., In re David*, Dkt. No. 05-22-WA, U.S. Dep't of Educ. (Dec. 14, 2005).

<sup>10</sup> *In re Danae*, Dkt. No. 13-28-WA, U.S. Dep't of Educ. (Oct. 24, 2013) at 4; *In re Carolyn*, Dkt. No. 11-02-WA, U.S. Dep't of Educ. (Aug. 11, 2011) at 4.

<sup>11</sup> *In re Faith*, Dkt. No. 10-04-WA, U.S. Dep't of Educ. (Nov. 19, 2010) at 3; *see also In re Richard*, Dkt. No. 12-19-WA, U.S. Dep't of Educ. (Apr. 4, 2012) at 3; *In re Paul*, Dkt. No. 11-90-WA, U.S. Dep't of Educ. (Mar. 8, 2012) at 2; *In re Jason*, Dkt. No. 10-01-WA, U.S. Dep't of Educ. (Aug. 24, 2010) at 4.

<sup>12</sup> *In re Faith*, Dkt. No. 10-04-WA, U.S. Dep't of Educ. (Nov. 19, 2010) at 3.

<sup>13</sup> *See In re Robert*, Dkt. No. 09-10-WA, U.S. Dep't of Educ. (Nov. 19, 2009) at 3; *see also In re Cruz*, Dkt. No. 08-12-WA, U.S. Dep't of Educ. (Aug. 5, 2009) at 2; *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 4-5.

<sup>14</sup> *In re J.*, Dkt. No. 15-50-WA, U.S. Dep't of Educ. (Nov. 9, 2015) at 6 n.14; *In re Cruz*, Dkt. No. 08-12-WA, U.S. Dep't of Educ. (Aug. 5, 2009) at 3; *In re Sean*, Dkt. No. 08-01-WA, U.S. Dep't of Educ. (July 31, 2009), at 3.

<sup>15</sup> *In re Spencer*, Dkt. No. 11-01-WA, U.S. Dep't of Educ. (June 7, 2011) at 2.

employee aware of the personnel action that affects pay before the pay change is implemented (e.g., promotions, pay increases, monetary awards, or bonuses), but it is the employee who often initiates a change in status that results in a pay change (e.g., a change in insurance coverage, a change in health benefit coverage, or a change in a retirement benefit).”<sup>16</sup> We begin the fault standard analysis by determining “whether, under the particular circumstances involved, a reasonable person would have been aware that he or she was receiving more than entitled, or, stated differently, whether the debtor had no reasonable expectation of payment in the amount received.”<sup>17</sup> In short, “where a reasonable person would have made inquiry about the accuracy of a salary payment, but the debtor did not, then the debtor is not free from fault.”<sup>18</sup>

In making this determination, we consider the employee’s job position, grade level, education and training, newness to Federal government, and “whether an employee has records at his or her disposal, which, if reviewed, would indicate a salary overpayment.”<sup>19</sup> Specifically, employees have a duty to review and react to errors that are clear on the face of a leave and earnings statement.<sup>20</sup>

There is no indication that the overpayments at issue in this matter resulted from Respondent’s fraud, actions, statements, or failures to disclose information. The evidence shows that Respondent submitted her health benefits election form and received confirmation that it was being processed. Therefore, the only matter left to be considered in the “fault” analysis is whether, during the time Respondent received overpayments of salary, Respondent knew or should have known that the Department was failing to deduct her share of health insurance premiums.

It appears that until she received notice from BCBS that her health care benefits were being terminated and inquired about the matter, Respondent was under the belief that her health insurance election had been processed correctly and there was no issue with her health care. There is no evidence that contradicts Respondent’s assertion that she had no actual knowledge of the salary overpayments or the underlying errors that caused the overpayments. In fact, there is evidence that once she became aware of the errors in processing her insurance paperwork and of the overpayments in salary, Respondent diligently addressed the matter. Thus, the remaining issue in the fault standard analysis is whether Respondent **should** have recognized the overpayments of salary during the time she received the overpayments.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *In re Jeanette*, Dkt. Nos. 06-11-WA, 06-12-WA, & 06-13-WA, U.S. Dep’t of Educ. (Sept. 20, 2006) at 2; *In re Spencer*, Dkt. No. 11-01-WA, U.S. Dep’t of Educ. (June 7, 2011) at 2.

<sup>20</sup> See *In re M*, Dkt. No. 17-26-WA, U.S. Dep’t of Educ. (July 6, 2017) at 5; *In re E*, Dkt. No. 15-61-WA, U.S. Dep’t of Educ. (Feb. 5, 2016) at 5; *In re J*, Dkt. No. 15-50-WA, U.S. Dep’t of Educ. (Nov. 9, 2015) at 5-6 n.14; *In re S*, Dkt. No. 13-59-WA, U.S. Dep’t of Educ. (Nov. 25, 2013) at 5; *In re B*, Dkt. No. 12-62-WA, U.S. Dep’t of Educ. (Dec. 28, 2012) at 4; *In re Spencer*, Dkt. No. 11-01-WA, U.S. Dep’t of Educ. (June 7, 2011) at 2.

The salary overpayment at issue arose from a failure to deduct health insurance premiums from Respondent's pay between pay periods 8 and 21 in 2019. Respondent's leave and earnings statements from all of those pay periods have deductions for taxes, retirement, and other matters, but no stated deduction for any insurance premiums. On Respondent's leave and earnings statements beginning in pay period 12, an additional deduction is added for "Dental/Vision" which then appears on every other leave and earnings statement through pay period 21. None of Respondent's leave and earnings statements from pay period 8 through 21, however, indicate any deduction for any general health insurance.

A waiver of a salary overpayment debt arising out of uncollected health care deductions may be "appropriate where there would be no readily apparent overpayment[s] on employee's leave and earnings statement."<sup>21</sup> Here, however, the failure to make a deduction for health care coverage was clear on Respondent's leave and earning statements. And Respondent has provided no evidence that it was reasonable to believe that this deduction was properly missing.<sup>22</sup> Rather, this matter is similar to *In re M*, where Respondent was denied a waiver of a salary overpayment arising out of uncollected health insurance deductions because she failed to meet the "fault standard" when her leave and earnings statements showed deductions for dental and vision insurance but no deductions that "would be understood to be general health insurance."<sup>23</sup>

As Respondent has indicated, she used her health insurance coverage throughout the period. It is reasonable that she would know that she had to pay a premium for that coverage. And contrary to Respondent's contention that she "had no reason to believe" that there was an error in her "premium deductions," the lack of deductions on her leave and earnings statements should have put her on notice of the error.

Respondent has failed to show why she was unable to discover missing health insurance deductions on her leave and earnings statements. She has also not proven that she reasonably believed that there should not have been such deductions. Therefore, I am unable to conclude that she has met the fault standard burden and I cannot grant her waiver request.<sup>24</sup> This decision constitutes a final agency decision.

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<sup>21</sup> *In re L*, Dkt. No. 16-40-WA, U.S. Dep't of Educ. (Aug. 31, 2016) at 5.

<sup>22</sup> *Contrast In re L*, Dkt. No. 16-40-WA, U.S. Dep't of Educ. (Aug. 31, 2016) (finding that where the employee showed that he had reason to believe that he was not provided health insurance during the relevant time, it was reasonable to suspect there would not be a payroll deduction for health insurance).

<sup>23</sup> *In re M*, Dkt. No. 16-52-WA, U.S. Dep't of Educ. (Feb. 15, 2017) at 5.

<sup>24</sup> A waiver cannot be granted if a respondent fails to satisfy the fault standard. *In re Richard*, Dkt. No. 12-19-WA, U.S. Dep't of Educ. (Apr. 4, 2012) at 3. Therefore, because a waiver cannot be granted in this matter, it is not necessary to analyze whether requiring repayment would have been inequitable if the fault standard had been met.

ORDER

Pursuant to the authority of 5 U.S.C. § 5584 (2012), Respondent's request for waiver of the entire debt to the United States Department of Education is **HEREBY DENIED**.<sup>25</sup>

So ordered this 25th day of February, 2020.

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Daniel J. McGinn-Shapiro  
Waiver Official

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<sup>25</sup> When there is a denial of a waiver of a debt resulting from a salary overpayment, as in this matter, the employee has ten (10) days to request a pre-offset hearing before an Administrative Law Judge to challenge the validity or amount of the un-waived debt or to argue that an involuntary repayment schedule imposed by the Department will cause "extreme financial hardship" in a separate pre-offset hearing. To do so, she should request such a hearing within 10 days of receipt of this decision. 34 C.F.R. § 32.6(b). As noted, however, this constitutes a final agency decision and Respondent may not challenge the denial of the waiver request. 34 C.F.R. § 32.5 (a)(1).