



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
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In the Matter of

[Redacted],

Respondent/Appellant.

Docket No. 20-27-WG

Administrative Wage Garnishment
Treasury Case No/Fed Debt ID: [Redacted]
AWG ID: [Redacted]
Dept Acct. No: [Redacted]

Appearances: [Redacted], Respondent/Appellant, self-represented.
Renu Kapur, Office of the Finance and Operations, Office of Financial
Management, Accounts Receivable and Bank Management Division, for
the U.S. Department of Education
Before: Angela J. Miranda, Administrative Law Judge

DECISION¹

I. Jurisdiction and Procedural History

This appeal commenced with the timely filing of a request for a hearing filed with the United States Department of the Treasury, Bureau of the Fiscal Service (BFS). The request for a hearing was in response to a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (Notice), dated April 22, 2020. The Notice indicates that the BFS, on behalf of the United States Department of Education (Department), intended to initiate proceedings to issue an administrative wage garnishment order to collect the debt owed by Respondent in the amount of **\$17,598.78**, which included interest, penalties, and costs.

On July 17, 2020, the Office of Hearings and Appeals received this request for hearing and other documentation from the Department's Office of Finance and Operations, Office of Financial Management (OFM). The BFS, on behalf of the Department, asserted its right to initiate Administrative Wage Garnishment proceedings pursuant to 31 U.S.C. § 3720D and 31 C.F.R. § 285.11. Pursuant to the hearing procedures in 34 C.F.R. § 34.13, on July 17,

¹ Attachment A is the Documents/Events List from the Office of Hearings and Appeals Electronic Filing System (OES) which lists the evidence of record in this proceeding. This decision will be added to the record upon issuance.

2020, I was assigned as the hearing official in this matter and I issued an Order Governing Proceeding (OGP) on July 27, 2020.

The OGP included a hearing schedule and the Department was ordered to file evidence necessary to establish the validity of this debt, consistent with the statutory and regulatory authorities. When the Department failed to follow that OGP, I issued an Order to Show Cause (OSC) and stayed the original hearing schedule. Thereafter, the Department filed additional evidence along with a response to the OSC.²

Having reviewed the evidence submitted, the administrative record is closed, and this matter is ready for decision.

II. Issues

1. Has the Department met its burden of proof to establish the existence and amount of the debt identified in the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated April 22, 2020?
2. If the Department has met its burden of proof, has the Department established that the debt is delinquent?
3. Has the Respondent established the proposed garnishment would cause financial hardship?

III. Legal Framework/Applicable Laws and Regulations

A. Applicable Statute

Subject to certain conditions, the head of an executive agency, that administers a program that gives rise to a delinquent nontax debt owed to the United States by an individual, may garnish the disposable pay of the individual to collect the amount owed, if the individual is not currently making required repayment in accordance with any agreement between the agency head and the individual (31 U.S.C. § 3720D). The individual shall be provided an opportunity for a hearing on the existence or the amount of the debt and to establish that imposition of the wage garnishment order would cause financial hardship (31 U.S.C. § 3720D(b)(5)(A) and (B)).

B. Applicable Regulations

Federal agencies seeking to collect a delinquent nontax debt owed to the United States through wage garnishment must follow the procedures set forth in 31 C.F.R. § 285.11. Generally, whenever an agency determines that a delinquent debt is owed by an individual, the agency may

² In an email dated September 14, 2020, the Respondent/Appellant notified the OHA that she had received a copy of the Department's submission in response to the Order to Show Cause. The Respondent indicated that she was aware of most of the documents in the submission and reported she did not sign the installment agreement that was part of the Department's submission. The Respondent restated her reasons for filing the request for a hearing and requested relief from this obligation. Although not filed consistent with the OGP, this statement was accepted and entered into the record as OES Document 8.

initiate proceedings administratively to garnish the wages of the delinquent debtor (31 C.F.R. § 285.11(d)). The agency must provide proper notice and an opportunity for a hearing (31 C.F.R. §§ 285.11(e) and (f)). In a hearing on a wage garnishment, the agency has the burden of proving the existence or amount of the debt (31 C.F.R. § 285.11(f)(8)(i)). Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, the debtor may present evidence that the terms of the repayment are unlawful, would cause financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law (31 C.F.R. § 285.11(f)(8)(ii)).

An agency shall prescribe regulations for the conduct of administrative wage garnishment hearing consistent with 31 C.F.R. § 285.11(f) or shall adopt this section without change by reference (31 C.F.R. § 285.11(f)(1)). The Department chose to prescribe regulations. The Department's regulations are found at Title 34 of the Code of Federal Regulations, Part 34.

The Department's regulations pertaining to the burden of proof are mostly consistent with 31 C.F.R. § 285.11(f)(8) but provide that the Department has met its burden by including in the record, and making available to the debtor on request, records that show the debt exists in the amount indicated in the notice, and payment of the debt is delinquent (34 C.F.R. § 34.14(a)(1) and (2)).

The Department administers Rehabilitation Training programs that may give rise to a nontax debt owed to the United States (*See generally*, 34 C.F.R. Part 385). One such program is the Rehabilitation Long-Term Training (*See generally*, 34 C.F.R. Part 386). Institutions of higher education are eligible for awards of financial assistance for this program (34 C.F.R. §§ 386.1, 386.2, and 385.2)³. Once an award of financial assistance is made, the grantee must use a designated portion of the grant for scholarships and must meet specified requirements prior to disbursement of scholarship assistance (34 C.F.R. §§ 386.31 and 386.33)⁴.

Each grantee must provide certain assurances when that grantee intends to provide scholarships (34 C.F.R. § 386.34⁵). Prior to disbursement of any scholarship the grantee must obtain a written agreement including the applicable terms and conditions related to receipt of the scholarship and the agreement must be signed by the recipient prior to disbursement of any scholarship funds (34 C.F.R. § 386.34(a)-(c)). In addition to maintaining standards for tracking satisfactory progress of a recipient scholar, the grantee must maintain a tracking system to determine the recipient scholar's compliance with the agreement, make necessary reports to the Secretary, and maintain records of the tracking and reports for a time equal to the time required to fulfill the recipient scholar's service obligation (34 C.F.R. § 386.34(g)-(i)). The grantee must establish policies and

³ While there are two versions to each of these regulations, current as of September 19, 2016 and up to September 18, 2016, the versions for §§ 385.2 and 386.2 are identical. To the extent that § 386.1 directly effects this analysis, the version in effect to September 18, 2016 was applied.

⁴ There are two versions to each of these regulations - current as of September 19, 2016 and up to September 18, 2016. To the extent that the application of these regulations directly effects this analysis, the version in effect to September 18, 2016 was considered and applied to this analysis.

⁵ This regulation was amended effective September 19, 2016. All cites in this decision to this regulation are to the version that was effective to September 18, 2016 because the Department asserts that the Respondent began a program of study on August 23, 2008 and graduated on August 14, 2014.

procedures for receiving written certification from recipient scholars at the time of exit from the program (34 CFR § 386.34(f)). The written certification must acknowledge the name of the institution, the number of the Federal grant that provided the scholarship, the scholar's field of study, the number of years the scholar needs to work to satisfy the work requirements, the total amount of the scholarship assistance received subject to the work-or-repay provisions, the time period during which the scholar must satisfy the work requirement and all other obligations of the scholar in 34 C.F.R. § 386.34 (34 CFR § 386.34(f)(1)-(6)).

IV. Review of Evidence and Analysis

A. Burden of Proof

Consistent with the burden of proof required by the applicable regulations, the Department has the burden of proving the existence and amount of any asserted debt (31 C.F.R. § 285.11(f)(8)(i) and 34 C.F.R. § 34.14). An alleged debtor may challenge the existence of the asserted debt, challenge the amount of the debt, challenge the garnishment amount, or any combination of these options.

When an alleged debtor challenges the existence or amount of the alleged debt, the alleged debtor must present by a preponderance of the evidence that no debt exists, or the amount of the debt is incorrect (31 C.F.R. § 285.11(f)(8)(ii) and 34 C.F.R. § 34.14(b)(1) and (2)). When the garnishment amount is challenged, the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause financial hardship, or that collection may not be pursued due to operation of law (31 C.F.R. § 285.11(f)(8)(ii) and 34 C.F.R. § 34.14(c) and (d)).

B. The Department's Record in support of the asserted debt

Upon initial transfer of this request for a hearing to the Office of Hearings and Appeals, the Department, through an employee of the OFM, forwarded two electronic documents in portable document format (PDF). One document was the Respondent's request for hearing, found in the record at OES Document 1, and a document identified as proof of debt, found in the record at OES Document 2. The Department's initial transfer of the hearing request was insufficient to establish the Department submitted all Department records. Therefore, the Department was ordered to file evidence necessary to establish the existence of the asserted debt and evidence the supporting the Respondent was delinquent. While the Department did not initially follow the OGP, it did file additional department records in response to an OSC.

The proof of debt document includes three Department records. The first Department record titled "Attachment 1 Scholarship Agreement (sample)" includes the signature of the Respondent which is dated July 23, 2013. This record is also signed by the Project Director or Other Grantee Official on July 23, 2013. This agreement includes one paragraph that allows the insertion of the name of the scholar, the name of the program, and the name of the grantee institution. None of these variables are specifically indicated (OES Document 2, pg. 2-4)⁶. The second Department record is titled "Attachment 2 Exit Certification Form (sample)" that is also signed by the

⁶ This document, as well as other documents, were submitted multiple times by the Department, but only one specific cite to the record will be provided in this decision.

Respondent and Project Director or Other Grantee Official on July 23, 2013 (OES Document 2, p. 5). This document includes five paragraphs that require the insertion of certain variable information. Only the variables for the scholar's name and social security number are completed. None of the variables related to the grantee institution, grant number, field of study, years of service required to complete the work requirement of the service agreement, total amount of the scholarship received, or the period of time when the work requirement must be completed are completed. The third Department record is a March 4, 2019 letter from the Office of Special Education and Rehabilitation Services (OSERS), Rehabilitation Services Administration (RSA) to the Respondent (OES Document 2, pp. 1-2). This letter indicates that RSA is attempting to verify certain information related to a scholarship administered by the grantee, Northeastern Illinois University. Although additional records were submitted in response to the OSC, these three records are presented as the Department's proof of the asserted debt.

C. Analysis

A grantee is required to make certain assurances prior to making a scholarship award (34 C.F. R. § 386.34). Prior to the initial disbursement of scholarship funds to an individual (scholar), the grantee and the scholar must enter into a written agreement that includes the terms and conditions required by this regulation (34 C.F. R. § 386.34(a)). Pursuant to 34 C.F. R. § 386.34(c), minimally, the agreement must notify the scholar:

- that he or she will be required to maintain specified employment on a full- or part-time basis, for a specified period of time that is not less than the full-time equivalent of two years for each year for which scholarship assistance is awarded, and to be completed within a specified period;
- that if the scholar does not complete the work/service requirement, the scholar will be responsible for repayment of all or part of any scholarship, plus interest, unless the Secretary allows an exception or deferral;
- that the employment obligation as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received;
- that until the employment obligation is satisfied, the scholar will inform the grantee of any changes in name, address, or employment status; and,
- that when a scholar enters into repayment status, the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed to the United States that will be repaid by the scholar, including interest and costs of collection and, if the scholar fails to meet the repayment obligation, may be collected by the Secretary according to applicable Department regulations.

When a scholar exits a program, the grantee shall obtain written certification from the scholar that acknowledges the name of the institution and the number of the Federal Grant that provided the scholarship, the scholar's field of study, the number of years the scholar needs to work to satisfy the work requirements, the total amount of scholarship assistance received subject to the work-or-repay provisions, the time period during which the scholar must satisfy the work requirement, and all other obligations specified in 34 C.F.R. § 386.34 (34 C.F.R. § 386.34(f)).

The Department's records in this matter have multiple deficiencies. The record identified as

“Attachment 1 Scholarship Agreement (sample)” does not comport with the written agreement required by 34 C.F. R. § 386.34(c), because the Department provided no evidence that this agreement was signed prior to the disbursement of scholarship funds that may have been provided to the Respondent, as is required by the Department’s regulations. The record identified as “Attachment 2 Exit Certification Form (sample)”, presented as the exit certification required by 34 C.F. R. § 386.34(f), fails to provide any of the required information that must be acknowledged by the scholar at the scholar’s exit from a program. Furthermore, this certification was signed on the same day as the scholarship agreement, which is inconsistent with the regulatory requirements that the written (scholarship) agreement be signed prior to the disbursement of any scholarship funds and the exit certification be signed when the scholar exits the program. The March 4, 2019 letter offered by the Department fails to prove the existence or amount of the asserted debt. Instead it provides conflicting information and fails to establish that the grantee had policies and procedures consistent with the regulatory requirements when financial assistance is provided to a grantee for Rehabilitation Long-Term Training Program scholarships.

As evidenced by the Department’s records, the grantee failed in meeting the regulatory requirements for distributing Rehabilitation Long-Term Training Program scholarships to this Respondent. While the March 4, 2019 letter fills in some of the information that the grantee was required to provide to establish the existence of the asserted debt, like the name of the grantee and the RSA grant numbers, it provides other evidence that undermines the ability of the Department to establish this debt as asserted. This letter identifies a total scholarship award that is greater than the sum of the two grants distributed. The letter identifies that the scholar began a program of study on August 23, 2009 and graduated, five years later, on August 14, 2014 but the Respondent signed a scholarship agreement and exit certification on July 23, 2013. Because these documents were executed on the same date, it is impossible to establish that the grantee properly disclosed the terms and conditions of the scholarship and work-or-repay provisions prior to any distribution of scholarship funds. With these records, it is clear the grantee failed to follow the regulatory requirements in the distribution of the scholarship funds. The records filed by the Department fail to establish the academic semesters in which the Respondent received scholarship funds. The letter identifies a five-year service obligation but fails to establish if that service obligation is consistent with the regulatory requirements. The Department has not properly established the existence and amount of this debt because the grantee failed to adhere to the regulatory requirements and the Department provided conflicting information in the March 4, 2019 letter.

Because the Department has failed to establish the existence of the asserted debt or the amount of the debt, no further analysis is required.

V. Findings of Fact

1. The Department asserts the Respondent incurred a debt owed to the United States in the amount of \$13,266.09.
2. On April 22, 2020, the United States Department of Treasury, Bureau of Fiscal Service issued a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings to

collect a debt in the amount of \$17,598.78, which included interest, penalties, and costs.

3. The debt reportedly arose out of an award to the Respondent as a scholarship associated with a rehabilitation long-term training program offered by a grantee of the Department.
4. The Respondent timely requested a hearing in response to the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings.
5. The Department failed to show the grantee met the regulatory requirements when granting academic scholarships to the Respondent.
6. The Department's records failed to establish the existence or amount of asserted debt.

VI. Conclusion and Order

The Department has failed to establish the existence or amount of the asserted debt identified by Fed Debt ID [Redacted], AWG ID [Redacted], and Department Account Number [Redacted]. The U.S. Department of Education and the U.S. Department of Treasury, Bureau of Fiscal Service shall not initiate wage garnishment proceedings as indicated in the notice dated April 22, 2020. Since the Department has failed to establish the existence or amount of the asserted debt, the Department is prohibited from seeking repayment from the Respondent now or at any time in the future. This decision is a final agency determination.

Date: September 22, 2020

Angela J. Miranda
Administrative Law Judge