



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
TELEPHONE (202) 245-8300

In the Matter of

[redacted],

Respondent/Appellant.

Docket No. 20-38-WG

Administrative Wage Garnishment
Treasury Case No: [redacted]
AWG ID: [redacted]
Dept Acct. No: [redacted]

Appearances: [redacted], Respondent/Appellant, self-represented.
Renu Kapur, Office of 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

DECISION

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 (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 May 15, 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 **\$5,966.82**,¹ which included interest, penalties, and costs.

¹ This request for a hearing was transferred to OHA by email from the Department's representative. The email was added to this administrative record on October 29, 2020 (OES Document 9). The email included informal information that there were payments posted to this Respondent's "account in Treasury and currently with Treasury fees and administrative fees, the balance is \$6,065.89." The transfer included two attachments in portable document format (PDF). Those submissions are currently Documents 1 and 2 in the Office of Hearings and Appeals Electronic Filing System.

On August 11, 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. On August 12, 2020, pursuant to the hearing procedures in 34 C.F.R. § 34.13, I was assigned as the hearing official in this matter and I issued an Order Governing Proceeding (OGP) on August 24, 2020.

The OGP included a hearing schedule and the Department was ordered to file evidence necessary to establish the existence of this debt, consistent with the statutory and regulatory authorities. Thereafter, the Department filed additional evidence along on September 2, 2020.

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 May 15, 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 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, as the grantor, 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 Program (*See generally*, 34 C.F.R. Part 386). Under this program, institutions of higher education are eligible for awards of financial assistance (34 C.F.R. §§ 386.1, 386.2, and 385.2)². 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)³.

Each grantee must provide certain assurances when that grantee intends to provide scholarships (34 C.F.R. § 386.34)⁴. 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

² There are two versions to each of these regulations. The first version, applicable in this matter, was in effect through September 18, 2016, and the second version became effective as of September 19, 2016. The versions for §§ 385.2 and 386.2 are identical. To the extent that § 386.1 directly affects this analysis, the version in effect to September 18, 2016 was considered and applied to this analysis.

³ There are two versions to each of these regulations. The first version, applicable in this matter, was in effect through September 18, 2016, and the second version became effective as of September 19, 2016. To the extent that the application of these regulations directly affects this analysis, the version in effect to September 18, 2016 was considered and applied to this analysis.

⁴ 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 18, 2008 and graduated on May 13, 2011.

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 prove, 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, transmitted two electronic documents. The first submission (OES Document 1) numbers 66 pages and includes a copy of the notice with enclosures, the Respondent's request for a hearing, a U.S. Treasury Financial Disclosure Statement signed by the Respondent and supporting documentation, and the BFS's AWG – Agency Request Resolution. The second submission (OES Document 2) numbers five pages, the first of which appears to be redacted in its entirety, a one-page letter from the Department's Office of Special Education and Rehabilitation Services, Rehabilitation Services Administration, dated February 17, 2016, and a two-page scholarship agreement signed by the Respondent on September 10, 2008. The Department's initial transfer did not provide records that established the asserted debt as required by the applicable regulations. Therefore, the Department was ordered to file evidence necessary to establish the existence of the asserted debt and evidence supporting that the Respondent was delinquent.

The Department filed additional documents in response to my August 24, 2020 Order Governing Proceedings. Specifically, on September 2, 2020, the Department filed the following documents: 1) a Debt Case Referral Document, 2) a duplicate of the February 17, 2016 letter from the Department to Respondent that stated that the Respondent's service period following completion of the program study had expired without any evidence that Respondent completed the required

service for her scholarship along with a copy of the aforementioned two-page scholarship agreement (OES Document 5). Additionally, the Department also filed another copy of the debt case referral document (Exhibit ED-1), and several U.S. Department of Treasury Centralized Receivable Service notices (Exhibit ED-2) (OES Document 6). Education's Exhibit ED-2 included a notice of demand dated March 31, 2016, multiple past due notices, and evidence of collections activity (Exhibits ED 2a -2d) (*Id.*).⁵ Finally, the Department filed a declaration of Renu Kapur, OFO Financial Management Analyst, which stated she believes the submissions submitted by the Department substantiate the validity of the debt (OES Document 7).

C. Analysis

A grantee is required to make certain assurances prior to making a scholarship award under the Rehabilitation Long-Term Training Program (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 during 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 years⁶ 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 is required to obtain written certification from the scholar that acknowledges certain information related to receipt of the scholarship (34 C.F.R. § 386.34(f)). The exit certification requires the scholar to acknowledge the correctness of the following information: 1) the name of the institution and the number of the Federal Grant that provided the scholarship, 2) the scholar's field of study, 3) the number of years the scholar needs

⁵ The March 31, 2016 Demand/Due Process notice indicates the initial debt was in the amount of \$10,230.00. Past due notices show minimal amounts of interest were added to the debt as of May 3, 2016 and May 25, 2016. The Department submitted no evidence of any transactions after May 25, 2016 until the Notice of Intent to Initiate Administrative Wage Garnishment proceedings was issued on May 15, 2020.

⁶ An academic year is defined as full-time course of study taken for a period totaling at least nine months or for the equivalent of at least two semesters, two trimesters, or three quarters (34 C.F.R. § 386.4).

to work to satisfy the work requirements, 4) the total amount of scholarship assistance received subject to the work-or-repay provisions, 5) the time period during which the scholar must satisfy the work requirement, and 6) all other obligations specified in 34 C.F.R. § 386.34 (34 C.F.R. § 386.34(f)(1)-(6)).

The Department's records in this matter have multiple deficiencies. First, the record identified as "Scholarship Agreement" 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. Second, the records fail to establish how the Respondent's service obligation was determined and fails to establish that it was properly calculated based on the receipt of scholarship funds. Lastly, the Department failed to submit any document that satisfies the requirement for an exit certification under 34 C.F.R. § 386.34(f). These identified deficiencies raise questions whether the grantee had policies and procedures in place that were consistent with the regulatory requirements or whether the grantee simply failed in its requirement to provide accurate and complete scholar information to the Department.

While the May 15, 2016 letter fills in some of the information that the grantee was required to provide to assist the Department in establishing 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. Although the evidence suggests the Respondent started the program of study on August 18, 2008, graduating nearly three years later, on May 13, 2011, the Scholarship agreement was not signed by Respondent until September 10, 2008, approximately three weeks after the Respondent began the course of study. Although a grantee is required to obtain the scholar's signature on the scholarship agreement before scholarship funds are distributed, the difference in time between when the Respondent reportedly started the program of study and the signing of the scholarship agreement is only a matter of weeks. That the Department did not establish the disbursement date of scholarship funds, is inconsequential in this case. More consequential in this case is the Department's failure to provide any evidence of an exit certification signed by the grantee and the Respondent. Without that critical evidence, the Department has failed to establish the existence of the asserted debt.

Consequently, the Department has failed to meet its burden of proof required by 31 C.F.R. § 285.11(f)(8)(i) and 34 C.F.R. § 34.14(a)(1). 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, for which the Respondent was delinquent in repaying.
2. The debt reportedly arose out of an award to the Respondent as a scholarship associated with the Department's Rehabilitation Long-Term Training Program offered by a grantee of the Department.

3. On May 15, 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 \$5,966.82, which included interest, penalties, and costs.⁷
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 establish that the grantee met the regulatory requirements when granting academic scholarship funds 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], 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 May 15, 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. To the extent any collections have been made pursuant to this notice of intent to initiate administrative wage garnishment, a refund must be issued to the Respondent. This decision is a final agency determination.

Date: October 29, 2020

Angela J. Miranda
Administrative Law Judge

⁷ There is some evidence the Respondent's original scholarship amount was \$10,230.00 and other evidence indicates a delinquent amount, as of May 15, 2020, was \$5,966.82. Although this suggests evidence of some payment by the Respondent prior to May 15, 2020, that evidence does not absolve the Department from meeting its burden of proof in this proceeding. Although the Respondent may have made payment on a debt the Department has not established in this proceeding, this Tribunal's authority to direct of refund to the Respondent is limited to amounts collected by means of administrative wage garnishment and there is no evidence the payments that may have been made were by administrative wage garnishment under the applicable regulations (*See*, 31 C.F.R. § 285.11(n) and 34 C.F.R. § 34.28).

SERVICE

By OES automatic email notice to:

[redacted]

Renu Kapur
U.S. Department of Education
Office of Finance and Operations
Office of Financial Management
Accounts Receivable and Bank Management Division
400 Maryland Avenue, S.W.
Washington, DC 20202
Renu.Kapur@ed.gov

Courtesy copy to:

U.S. Department of the Treasury
Attention: AWG Analyst
Administrative Wage Garnishment Liaison
Post Office Box 830794
Birmingham, AL 35283-0794
By email, delivery confirmation to: AWGhearingrequest@fiscal.treasury.gov