



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

**EH,**

Respondent.

Docket No. 20-32-WG

Administrative Wage Garnishment  
Proceeding

Treasury Case No.: L24400164

AWG ID: WG1871297

Department Account No.: CRS-RSA-18-030

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Appearances: [redacted], Respondent, 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: Robert G. Layton, Administrative Law Judge

**DECISION**

This appeal involves a request for a hearing filed with the United States Department of Treasury (Treasury), Bureau of the Fiscal Service (BFS). Respondent filed the request in response to a February 24, 2020 Notice of Intent to Initiate a Wage Garnishment Proceeding (Notice). Respondent's request was dated March 23, 2020.<sup>1</sup> Respondent's request for a hearing and other documentation from the U.S. Department of Education's Office of Finance and

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<sup>1</sup> See Request for Hearing dated March 23, 2020.

Operations, Office of Financial Management (OFM) was forwarded to the tribunal on August 2, 2020. In the February 24, 2020 Notice, Treasury's 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. The debt arises from Respondent's failure to complete a post-graduate work requirement for the Long-Term Training Program scholarship she received and that was funded by the Department's Rehabilitation Services Administration (RSA).<sup>2</sup>

In the initial hearing request packet submitted to OHA on August 5, 2020, there was a copy of the Notice of Intent to Initiate Wage Garnishment Proceedings, an Administrative Wage Garnishment Request for Hearing or Eligibility Determination form filled out by Respondent, a completed Consumer Debtor Financial Statement, and three of Respondent's Earnings Statements from her employer. Respondent requested a hearing solely on the basis that the proposed garnishment would cause financial hardship. The Department submitted documents and supporting materials regarding the alleged debt including Respondent's signed Scholarship Agreement, and her signed Exit Counseling Certification.

### **ISSUES**

The issues to be resolved in this decision are:

- 1. Has the Department met its burden in showing that the debt exists in the amount identified in the debt notice?**
- 2. Has the Department met its burden in showing that the debt was delinquent?**
- 3. Has the Respondent established that the proposed garnishment would cause financial hardship?**

### **SUMMARY OF DECISION**

The Department has met its burden of proof establishing the existence and amount of the

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<sup>2</sup> 34 C.F.R. Part 386.

debt identified in the February 24, 2020 Notice. The Department has also established that the debt identified in the Notice in the amount of \$48,211.14 is delinquent. Respondent has shown/failed to demonstrate that the proposed garnishment would cause financial hardship.

## **FINDINGS OF FACT**

### **I. PROCESS BEFORE OHA**

In a request for hearing dated March 23, 2020, Respondent submitted a request to the U.S. Department of Treasury (Treasury) challenging the February 24, 2020 Notice of Intent to Initiate an Administrative Wage Garnishment (Notice). Respondent's request contained a copy of the Notice as well as a form for which a debtor may select the bases on which the garnishment is being challenged. On the form, Respondent challenged the Notice on the basis that (1) the proposed garnishment would cause financial hardship. Respondent also submitted the Consumer Debt Financial Statement supplied by Treasury and supporting source documentation.

The Department submitted signed copies of the Scholarship Agreement and the Exit Counseling Certification.

On August 5, 2020, I issued an Order Governing Proceedings. Both the Respondent and the Department were required to submit a Notice of Appearance. The August 5, 2020 Order also directed Respondent to review the record received by the tribunal and contained in the tribunal's e-filing system known as OES by August 17, 2020. Respondent also was ordered to file a short brief or written statement supplementing the initial appeal request and the basis for alleging the proposed garnishment would cause financial hardship. Respondent was advised that she should submit a signed financial statement along with copies of earnings records, income records and proof of stated expenses. The August 5, 2020 Order noted that failure to submit the financial

information required may result in a finding that Respondent has not established financial hardship. The Department submitted its Notice of Appearance when it sent over Respondent's hearing request to OHA on September 9, 2020. On September 10, 2020, Respondent submitted a hand-written statement and additional supporting documentation including an updated Consumer Debtor Financial Statement, a Santander car loan billing statement showing a monthly payment of \$440.30 due on a payoff loan balance of \$14,828.04, two additional earnings statements from her employer, and a Navient Student Loan Account History Statement dated August 31, 2020 showing two monthly payments of \$559.31 and \$280.46 due on a total student loan balance of \$61,837.21.

### **PRINCIPLES OF LAW**

In this proceeding, the Department must establish the existence and amount of the debt and must prove that the debt is delinquent. Under 31 U.S.C. § 3720D, the Department may garnish the disposable pay of an individual to collect the amount owed, if the individual is not making required repayment in accordance with any agreement between the Department and the individual. The statute provides for an opportunity for a hearing on the existence or the amount of the debt and to establish that imposition of the wage garnishment would cause financial hardship.<sup>3</sup>

The debt at issue in this administrative wage garnishment hearing stems from a failure to meet a condition of a scholarship Respondent received. RSA administers scholarships for rehabilitation training programs which may give rise to a nontax debt if the conditions for receipt of the scholarship is not met.<sup>4</sup> The program that gave rise to the debt at issue in this proceeding is

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<sup>3</sup> 31 U.S.C. § 3720D(b)(5)(A) and (B).

<sup>4</sup> *See generally*, 34 C.F.R. Part 385.

the Rehabilitation Long-Term Training Program.<sup>5</sup> Under this program, institutions of higher education are eligible to receive financial assistance awards.<sup>6</sup> The institutions then are required to use a designated portion of the funds for scholarships and must meet specified requirements prior to the disbursement of these scholarships.<sup>7</sup>

Each recipient institution must meet certain requirements when it intends to provide scholarships.<sup>8</sup> Specifically, the institution must obtain a written agreement including the applicable terms and conditions related to the receipt of the scholarship funds and the agreement must be signed by the student recipient prior to the disbursement of the scholarship funds.<sup>9</sup> The institution is required to maintain standards for tracking satisfactory academic progress of a recipient scholar and is also required to maintain a tracking system to determine the recipient's compliance with the service obligation for the length of the time required to fulfill the recipient's service obligation and provide reports to the Secretary as needed.<sup>10</sup> The institution must also establish policies and procedures for receiving written certification from recipients at the time they exit the educational program.<sup>11</sup> 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 recipient needs to work to satisfy the work requirement and all other obligations of the scholar.<sup>12</sup>

The Department prescribed its own regulations for the conduct of administrative wage garnishment hearings, which may be found at 34 C.F.R. Part 34.<sup>13</sup> The regulatory procedures for

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<sup>5</sup> See 34 C.F.R. Part 386.

<sup>6</sup> 34 C.F.R. § 386.1, 386.2, and 385.2.

<sup>7</sup> 34 C.F.R. §§ 386.31 and 386.33.

<sup>8</sup> 34 C.F.R. § 386.34.

<sup>9</sup> 34 C.F.R. § 386.34(a) – (c).

<sup>10</sup> 34 C.F.R. § 386.34(g) – (i).

<sup>11</sup> 34 C.F.R. § 386.34(f).

<sup>12</sup> 34 C.F.R. § 386.34(f)(1) – (6).

<sup>13</sup> An agency may adopt the procedures contained in 31 C.F.R. § 285.11(f), which may be applied government-wide

collecting a delinquent nontax debt owed to the Department through wage garnishments are contained in 31 C.F.R. § 285.11. The Department may initiate proceedings to administratively garnish the wages of the delinquent debtor.<sup>14</sup> Before doing so, it must provide proper notice and an opportunity for a hearing.<sup>15</sup> The Department bears the burden of proving the existence and amount of the debt. Under the Department's hearing procedures, the Department meets its burden of proof by including in the record and making available to the debtor on request, records which show that the debt exists in the amount indicated in the notice, and that payment of the debt is delinquent.<sup>16</sup> Once the Department has met its burden, the debtor is required to prove by a preponderance of evidence that no debt exists or that the amount is not correct.<sup>17</sup>

The debtor may also challenge the garnishment on two bases for which the validity of the debt is not at issue. First, the debtor may present evidence that the collection of the debt would cause financial hardship, the terms of the repayment are unlawful or the collection of the debt may not be pursued due to operation of law.<sup>18</sup> The Notice of Intent to Initiate Wage Garnishment states that the debtor's employer may be ordered to garnish up to 15% of the debtor's disposable income each pay period until the debt including all interest, penalties and costs are paid in full.<sup>19</sup> Disposable income is defined as a debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld; and amounts required by law to be withheld include amounts for deductions such as social security taxes and

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or it may promulgate its own regulatory procedures. The Department chose the latter.

<sup>14</sup> 31 C.F.R. § 285.11(d).

<sup>15</sup> 31 C.F.R. § 285.11(e) and (f).

<sup>16</sup> 34 C.F.R. § 34.14(a)(1) and (2).

<sup>17</sup> 31 C.F.R. § 285.11(f)(8)(i).

<sup>18</sup> 31 C.F.R. § 285.11(f)(8)(ii).

<sup>19</sup> See Request for Hearing, p. 11.

withholding taxes, but do not include any amount withheld pursuant to a court order.<sup>20</sup>

The debtor bears the burden of demonstrating that the proposed garnishment rate would cause financial hardship by a preponderance of the evidence.<sup>21</sup> Specifically, the debtor must show that withholding the amount of wages proposed in the notice would leave her unable to meet the basic living expenses for her and her dependents.<sup>22</sup>

The standards for proving financial hardship are contained in 34 C.F.R. § 34.24. A debtor must prove by credible documentation the amount her and her dependents incur as living expenses and the income available from any source to meet those expenses.<sup>23</sup> The tribunal then considers the claim of financial hardship by comparing the proven amounts incurred for basic living expenses against the amounts spent for basic living expenses for families of the same size and similar income to the debtor.<sup>24</sup> The Department’s regulation refers to the standards published by the IRS under 26 U.S.C. § 7122(c)(2), which the regulation identifies as the “National Standards”. The National Standards establish the average amounts spent for basic living expenses for families of the same size as, and with family incomes comparable to the debtor’s family.<sup>25</sup>

## **ANALYSIS**

### ***DEPARTMENT’S BURDEN OF PROOF***

In a wage garnishment proceeding, the Department has the burden of proving the existence and the amount of the debt.<sup>26</sup> An alleged debtor may challenge the existence of the

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<sup>20</sup> 34 C.F.R. § 285.11

<sup>21</sup> 34 C.F.R. § 34.14(c).

<sup>22</sup> 34 C.F.R. § 34.14(c).

<sup>23</sup> 34 C.F.R. § 34.24(d).

<sup>24</sup> 34 C.F.R. § 34.24(e).

<sup>25</sup> National Standards may be found at the IRS website at “[National Standards: Food, Clothing and Other Items | Internal Revenue Service \(irs.gov\)](#)”. (Last visited June 17, 2021)

<sup>26</sup> 31 C.F.R. § 285.119(f)(8)(i) and 34 C.F.R. § 34.14.

asserted debt, challenge the amount of the debt, challenge the garnishment amount or any combination of these options. Notably, in the instant proceeding, Respondent has not challenged either the existence or amount of the debt.

The Department has submitted a copy of the Scholarship Agreement signed and dated by Respondent and the Exit Counseling Certification also signed and dated by Respondent.

Respondent is responsible – as delineated under the agreement and by regulation – to repay the scholarship funds received. Because the Department has established that a debt exists, the Respondent is required to demonstrate that collection of the debt would result in financial hardship.

### ***RESPONDENT'S EVIDENTIARY BURDEN NOT MET***

The debtor bears the burden in this proceeding of demonstrating by a preponderance of evidence that collection of the debt would be a financial hardship. Respondent submitted the following to support her claim of financial hardship:

1. Consumer Debtor Financial Statement<sup>27</sup>
2. Five biweekly earnings statements from her employer indicating varying amounts of income.<sup>28</sup>
3. Santander Loan Statement with a monthly payment of \$440.30 due from Respondent.
4. Navient Student Loan Statement with two monthly payments of \$559.31 and \$280.46 due from Respondent.

Respondent submitted credible documentary evidence of her averaged biweekly disposable income of \$1,590.06 or an average monthly income of \$3,180.12.<sup>29</sup> Respondent asserted

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<sup>27</sup> Respondent lists \$4,362 in gross monthly income, a checking account with a \$2,000 balance and \$2,955 in monthly expenses. Specifically, Respondent lists rounded amounts of \$440 (car loan), \$840 (student loan), \$300 (rent), \$100 (gas), \$300 (food), \$100 (medical) and \$875 in tuition. Respondent also states that she owns no real estate property.

<sup>28</sup> These biweekly disposable salary amounts are \$1,403.21 paid on February 2, 2020, \$1,760.38 paid on March 6, 2020, \$1,492.54 paid on March 20, 2020, \$1,672.49 paid on July 24, 2020, and \$1,621.81 paid on August 7, 2020. Respondent's disposable income was calculated by subtracting from her gross income the amounts deducted for federal and state taxes, health and dental insurance premiums, and other amounts required to be deducted by law.

<sup>29</sup> This averaged amount was obtained by adding together the net amounts listed on Respondent's earnings statements and dividing by the number of statements.

monthly expenses in the amount of \$2,955. Respondent submitted documentary evidence of her car payment and student loan monthly payments totaling \$1,280.07. Respondent's stated amounts on her Consumer Debtor Financial Statement for other basic living expenses are well within the IRS 2021 National Allowable Living Expenses. Consequently, the tribunal finds that Respondent has demonstrated that she has \$2,080.07 in proven monthly living expenses.<sup>30</sup> Fifteen percent of Respondent's averaged biweekly disposable income of \$1,590.06 is \$238.51 (rounded to nearest whole penny). Based on the evidence submitted by Respondent of her disposable income and proven living expenses, Respondent has not established that having her wages garnished in an amount up to 15% of her disposable income would cause her financial hardship.<sup>31</sup> Garnishment of the amount specified in 31 C.F.R. § 257.64(i) may proceed.<sup>32</sup>

### **CONCLUSIONS OF LAW**

- 1. The Department met its burden of proof in establishing the existence and amount of the debt identified in the February 24, 2020 Notice of Intent to Initiate Administrative Wage Garnishment.**
- 2. The Department met its burden of proof in establishing that the debt is delinquent.**
- 3. Respondent has not met her burden of proof that collection of the debt would cause financial hardship.**

### **ORDER**

In accordance with 32 U.S.C. §3720D and 31 C.F.R. § 285.11, the Respondent's debt

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<sup>30</sup> Respondent did not submit any documentary regarding the \$875 in monthly tuition payments. Consequently, the tribunal cannot consider this as a proven monthly expense.

<sup>31</sup> Based on Respondent's submitted evidence, she has monthly funds of \$1,100.05 available once her living expenses are paid.

<sup>32</sup> Once a garnishment order has been issued, the debtor's employer is ordered to deduct from all disposable pay paid to the debtor the lesser of the amount indicated on the garnishment order of up to 15% or the amount set forth in 15 U.S.C. § 1673(a)(2). The amount set forth in 15 U.S.C. § 1673(a)(2) is the amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the federal minimum hourly wage.

may be garnished in the amount prescribed in the February 24, 2020 Notice.

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Robert G. Layton  
Administrative Law Judge

**Dated: July 8, 2021**

