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

KD,

Respondent.

Docket No. 20-33-WG

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

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: Angela J. Miranda, Administrative Law Judge

DECISION

I. Jurisdiction and Procedural History

This appeal commenced with the filing of a request for a hearing filed by facsimile with the United States Department of the Treasury (Treasury), Bureau of the Fiscal Service (BFS), on February 19, 2020 (OES Document 1, p. 3). The request for a hearing was in response to a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (Notice), dated January 20, 2020 (*Id.* at 4-8).[1] The Notice indicates that the BFS, on behalf of the United

[1] BFS indicated in documentation transferred to the U.S. Department of Education, that the request for hearing was filed late. A filing determined to be late does not preclude the processing of that appeal, it only allows Treasury to proceed with garnishment without waiting for the administrative process to conclude (31 U.S.C. § 3720D(b)(c)(1) & (2) 31 C.F.R § 285.11(f)(4) & (5), 34 C.F.R. § 34.11(a)-(c)). This Notice advises no garnishment order will be issued to an employer if the debt is paid in full or a repayment plan is established before February 19, 2020, and further provides no garnishment order will be issued if a written request for hearing is received on or before February 11, 2020. The Respondent's request was filed on February 19, 2020. The record is devoid of any evidence that Treasury has commenced garnishment. Notably, Treasury's regulations and the regulations of the Education Department identify different amounts of time for a timely filing of a request for hearing. The request for a hearing was timely filed, pursuant to the regulations for the Education Department.

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 **$25,008.59.** The Notice further indicates this amount includes interest, penalties, and costs.

On Sunday, August 2, 2020, the Office of Hearings and Appeals received an email transmission of 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 3, 2020, pursuant to the hearing procedures in 34 C.F.R. § 34.13, I was assigned as the hearing official in this matter, and on August 11, 2020, I issued an Order Governing Proceeding (OGP) (OES Document 4).

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. When the Department failed to follow that OGP, and both the Department and the Respondent failed to file a Notice of Appearance, I issued an Order to Show Cause (OSC). Thereafter, the Department filed additional evidence along with a response to the OSC and a Notice of Appearance on September 10, 2020 (OES Document 5). On September 4, 2020, the Respondent registered as an e-filer, which was accepted as her consent to the voluntary use of the Office of Hearings and Appeals Electronic Filing System (OES) for filing and service.

On October 21, 2020, I issued an Order Further Governing Proceeding (OES Document 9). The Order allowed the Respondent until November 13, 2020, to file a short brief to explain why the garnishment would cause financial hardship, to complete the financial hardship form, and to provide information about her asserted involuntary termination and current employment. After the Respondent failed to file anything on or before November 13, 2020, I issued an Order to Show Cause on January 19, 2021, requiring the Respondent to explain her failure to submit the required filings and advising her in the absence of a response the record will be closed, and a decision will be issued based on the evidence of record (OES Document 10). No additional filings were received by the Respondent.[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

[2] On January 19, 2021, the Respondent responded by email to the OES generated email notice of the issuance of the Order to Show Cause. She asserted her home burned down on September 9, 2020, she is currently in a hotel provided by FEMA, unemployed, and in need of a "RESPONSE ASAP." On January 21, 2021, the assigned OHA attorney responded by email, advising the Respondent of the need to provide updated mailing address, an updated contact telephone number, reminding her that filings were due on or before February 16, 2021, and informed her is she was requesting an extension of time beyond February 16, 2021, she needed to inform the Tribunal of the length of extension needed. No further email communications or filings were received from the Respondent.

debt identified in the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated January 20, 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 and that garnishment should not be allowed due to having been involuntary terminated from her last employment and reemployed for less than twelve (12) months?

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)). When an individual has been reemployed within 12 months after having been involuntarily separated from employment, no amount may be deducted from the disposable pay of the individual until that individual has been reemployed continuously for at least 12 months (31 U.S.C. § 372D(B)(6)).

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 hearings 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's regulations in relation to filing a timely request for hearing are more generous than the statute and Treasury's regulations for timely filings.[3]

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).[4] 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).[5]

Each grantee must provide certain assurances when that grantee intends to provide scholarships (34 C.F.R. § 386.34).[6] 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 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 as provided in 34 C.F.R. § 386.34 (34 CFR § 386.34(f)(1)-(6)).

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[3] That statute indicates a request for a hearing is timely if the written request for a hearing is received within 15 days of the date on the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (31 U.S.C. § 3720D(b)(c)(1)). Treasury's regulations expand that time to 15 business days following the mailing of the notice (31 C.F.R § 285.11(f)(4)). The Department's regulations indicate a request for hearing is timely if a request is sent by mail and is postmarked no later than 30 days following the date of the garnishment notice or if the designated office receives the request not later than 30 days following the date of the notice (34 C.F.R. § 34.11(a)(1) & (2)).

[4] 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 effects this analysis, the version in effect to September 18, 2016, was considered and applied to this analysis.

[5] 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 effects this analysis, the version in effect to September 18, 2016 was considered and applied to this analysis.

[6] This regulation was amended effective September 19, 2016. All cites in this decision to this regulation are to the version that was effective through September 18, 2016, because the evidence in this record establishes that the Respondent was a scholarship recipient whose exit date was June 11, 2016.

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(a)(1) & (2)). 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 (31 U.S.C. § 3720D(b)(5)-(6), 31 C.F.R. § 285.11(e)(2), and 34 C.F.R. § 34.14(b)-(d)).

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 Evidence of Record

The Department's record as filed in this proceeding establishes that on May 20, 2016, the Respondent signed an exit certification that established she received scholarship funds from Western Oregon University (WOU), a grantee of the Department, under a department grant (No. H 129 B08 0026) for the Fall 2012, Winter 2013, Spring 2013, Summer 2013, and Fall 2013 semesters, the equivalent of one and one-half academic years. The Respondent's exit date was June 11, 2016. The Respondent received $18, 293.00 in scholarships and was subject to work for three (3) years in qualifying employment or repayment provisions in the amount equal to the scholarship funds received. The qualifying employment was to be commenced no later than June 11, 2018. The qualifying employment was to be completed no later than June 10, 2021. Qualifying work during the payback period can be used to reduce the total amount of the service obligation owed. The exit certification indicates the Respondent received a copy of the Tuition/Stipend Scholarship Agreement that was signed by the Respondent, presumably prior to the disbursement of the scholarship funds, although the scholarship agreement was not included in the record. (OES Document 2, p. 3).

By letter dated December 13, 2018, the Training Program Unit in the Office of Special Education and Rehabilitation Services (OSERS) advised the Respondent that WOU reported that she graduated on June 11, 2016, but she had failed to provide WOU with any information regarding her work history. The letter explained the Department was making a final attempt to verify the information provided by the grantee and requested that the Respondent confirm the information that had been provided. The Department further explained it was trying to confirm the information so it could determine if the Respondent had any creditable qualifying work toward her service obligation or if she had a compelling reason to request a waiver of repayment of the scholarship awarded. Lastly, the Department advised the Respondent if she did not provide the requested information, the repayment provisions in relation to the scholarship received would

be activated and a referral would be made to initiate collection of the scholarship amount received. (OES Document 2, pp. 1-2).

The Department records do not include any evidence the Respondent responded to the Department's letter and the Respondent has failed to provide any evidence that she responded.

Thereafter, on February 12, 2019, an invoice was issued to the Respondent by Centralized Receivables Service (CRS) on behalf of the Department (OES Document 8, pp. 4-7). The invoice indicated the full amount of the scholarship funds, $18,293.00, was due on or before March 14, 2019. This initial invoice advised the Respondent that interest will accrue at an annual rate of 1% on any outstanding amount, a penalty will be assessed at the annual rate of 6% on any amount outstanding after 91 days from the Invoice Date. The invoice further advised if the full amount was not paid within 60 days, CRS would refer the debt to Treasury's Debt Management Services (DMS), at which time additional administrative fees of up to 30% will be added to the debt. Lastly, the invoice advised the Respondent of other actions that could be taken if this debt remained unpaid. In response to the invoice dated February 12, 2019, the Respondent provided financial statement showing expenses of $2,043.38 (presumably monthly) and some supporting documentation (*Id.* at 12-20).

On March 18, 2019, CRS issued a past Due Notice to the Respondent. This notice included added interest in the amount of $16.26 and indicated the balance due was now $18,309.26 (*Id.* at, pp. 25-27). Two days later, on March 20, 2019, CRS issued a request that the Respondent file a Financial Statement. Without further explanation, the amount due was now identified as $18,311.29 (*Id.* at 29-33).

On April 9, 2019, the Respondent submitted a debtor financial statement with supporting documentation and the Respondent's 2017 federal tax return that was filed jointly with her husband (*Id.* at 35-50). In the response, the Respondent identified she was working for nine (9) months as a counselor with Acadia and that she previously worked for Community Services Consortium for one and a half years (*Id.* at 37).[7] The Respondent included two biweekly pay statements supporting the information she was working as a counselor and the most recent pay statement showed her year-to-date earnings were $6,234.470 (*Id.* at 47-50). On April 30, 2019, CRS completed a Financial Assessment, which indicates the Respondent has a monthly surplus of $195.00 (*Id.* at 51-53).

The Department provided documentation of an CRS Installment Agreement (IA), dated May 7, 2019, showing an amount due of $18,355.68 (*Id.* at 55-65). The Agreement indicates the Respondent agreed to make monthly payments of $50.00 for 35 months and a final balloon payment of $17,117.50, due on or before April 22, 2022. This agreement advised the Respondent that payments would be applied first to administrative costs, second to penalties, third to interest, and finally to the principal of the remaining unpaid balance.[8]

[7] There is no evidence that the Respondent provided any further information of this work activity and there is no evidence in this record that any of this work was considered qualified employment, eligible for credit that would reduce the payback provisions.

[8] The agreement in evidence is not signed by the Respondent but includes a notice to the debtor that returning a signed IA is not necessary if the debtor acknowledged and accepted its terms and conditions during the call with the Centralized Receivables Service specialist. The Department has provided no further evidence of a signed agreement

Thereafter, CRS sent four (4) Past Due Reminder Notices dated June 28, 2019, July 30, 2019, September 27, 2019, and October 29, 2019. The notices showed interest accrued in the amounts of $17.76, $10.64, $26.36, and $10.48, respectively. The notices showed a total due of $18,287.08, $18,253.30, $18,183.08, and $18,149.20, respectively. (*Id.* at 67-77).

Just about six weeks after the October 2019 past due notice, CRS sent an Installment Agreement Termination Notice, dated December 10, 2019 (*Id.* at 79). Without explanation, this termination notice indicates the principal amount due is $19,092.49, an increase of $943.29 from the October 2019 past due notice. As indicated previously in this decision, on January 20, 2020, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was issued for $25,008.59, an unexplained difference of $5,961.10 from the IA termination notice (*Id.* at 4-5).

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 years[9] 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

or documentation that the Respondent verbally agreed to the IA.

[9] 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).

provided the scholarship, 2) the scholar's field of study, 3) the number of years the scholar needs 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 has at least one deficiency and includes conflicting evidence regarding the amount of the debt. Although the Department has failed to submit an executed scholarship agreement between the grantee and the scholar that includes the terms and conditions required by 34 C.F. R. §§ 386.34(a) and (c) prior to the distribution of scholarship funds, there is evidence that such an agreement was executed. Notably, the exit certification that is included in the Department's records, and in in this hearing record, specifically references that the Respondent received a copy of her signed Tuition/Stipend Scholarship Agreement at the time the exit certification was executed (OES Document 2, p. 3). The Respondent has offered no challenge to the existence of a written agreement prior to the disbursement of scholarship funds and has not challenged the assertion that she was provided a copy when the grantee presented the exit certification for the Respondent's signature. The exit certification repeats all the specific information that is required in the scholarship agreement pursuant to 34 C.F. R. § 386.34(c). The exit certification identifies the amount of the scholarship ($18,293.00), the total academic years the scholarship was received (1.5 years), the qualified work period (3 years), the conditions when the work requirement must start and when the work requirement must be completed (no later than two years after exiting the program and within five years of exiting the program), as well as the consequence for failure to complete the full work requirement (payback of the scholarship in part or in full). Lastly, the exiting scholar was reminded of the obligation to inform the grantee of any change in name, address, or employment status within 10 days and that the scholar is responsible for documenting that the terms of the scholarship have been satisfied. Although the record does not include a copy of the executed scholarship agreement, this deficiency is cured by the submission of an executed comprehensive exit certification.

In a wage garnishment proceeding, when an administrative hearing is requested, the initial burden is with the Department to establish that a debt is owed and the amount of the debt, in addition to establishing the Respondent is in default (31 C.F.R. § 285.11(f)(8) and 34 C.F.R. §34.14). In response, an alleged debtor may challenge the existence of the debt, the amount of the debt, the garnishment amount, may assert exemption from garnishment due to involuntary termination from employment and reemployment for less than 12 months (31 C.F.R. § 285.11(j) and 34 C.F.R. § 34.14(d)(2), or may assert any combination of these options. In the request for a hearing, the Respondent has specifically challenged the garnishment amount and asserted she is exempt from garnishment due to having been involuntary terminated from employment and currently reemployed for less than twelve (12) months (OES Document 1, p. 3). While the Respondent has not specifically challenged the amount of the debt, that does not eliminate the Department's obligation to establish the existence and amount of debt.

Review of the evidence of record establishes that the Department has met its obligation to establish the existence of the debt and that the Respondent has defaulted. However, the Department's records include evidence that the debt amount was initially set at $18,293.00 (OES Document 2, p. 3), reached a low of $18,149.20 (OES Document 8, pp. 76-77) after the

Respondent made some payments pursuant to an IA, and increased to $25,008.59 when the Notice of Intent to Initiate Wage Garnishment was issued (OES Document 1, p. 4).

The Department has not offered any evidence to reconcile the varying amounts of the debt that are included in its records. Some of the notices include information as to accrual of interest, costs and penalties that will apply, including when triggered, and that an additional administrative fee **of up to 30%** (*emphasis added*) would be added upon referral for collection to the U.S. Department of Treasury. Notably, none of the notices indicate what factors are considered when determining the percentage of the additional administrative fee. For example, the CRS invoice, dated February 12, 2019, includes specific information regarding interest accrual, general unspecified information regarding administrative costs and penalties, specific information on when a penalty at the annual rate of 6% is imposed, and notice that an additional administrative fee of up to 30% will be added upon referral to Treasury for collection. The past due notices include specific information regarding interest accrual and a penalty assessed at an annual rate of 6% on any amount outstanding after 91 days from the invoice date. The IA includes a general statement regarding assessed interest, administrative costs, and penalties as required by "applicable laws and regulations" but fails to identify the applicable laws and regulations or any other specific information. The IA repeats the information that an additional fee of up to 30% will be added upon referral to Treasury. The IA specifies the order in which payments received will be applied to the outstanding balance. The IA termination notice repeats the general information regarding the additional administrative fee that will apply upon referral to Treasury for collection. The Department seemingly relies upon the amount indicated in the Notice of Intent to Initiate Wage Garnishment without a full accounting that shows when and how much interest, costs, and penalties were posted, when and how much additional administrative fee was posted, and when and how much in payments were credited. Consequently, the amount of debt the Department has properly established on this record is the amount indicated in the past due reminder notice, dated October 29, 2019, and that is $18,149.20 (OES Document 8, p. 76).

The evidence of record establishes the Respondent defaulted on this debt after entering into an installment agreement. Once the Department has met its burden, the burden shifts to the debtor if the debtor challenges the existence or amount of debt. In cases where the debtor makes those challenges, the debtor must provide by a preponderance of evidence that no debt exists or that the amount is not correct (31 C.F.R. § 285.11(8)(ii) and 34C.F.R. § 34.14(b)). Respondent has not provided any evidence that payments were made to reduce this debt after October 29, 2019.

The Respondent's request for hearing does not challenge the existence of the debt and she has not offered any evidence beyond the Department's record filed in this matter to challenge the amount of the debt. The Respondent's request for a hearing does assert that the proposed garnishment would cause financial hardship and that she is ineligible for garnishment due to involuntary termination from employment and she has not been employed in her current job for at least twelve (12) months.

The initial OGP, dated August 11, 2020, advised the Respondent of her opportunity to submit a brief or written narrative in support of the challenges indicated in her request for hearing (OES Document 4). The OGP included a copy of, and the internet link to, Treasury's financial statement form used to assess a debtor's claim of financial hardship. The Respondent was

informed that the failure to submit the required financial statement along with copies of supporting documents could result in a finding the Respondent has not established financial hardship. As indicated earlier in this decision, on October 21, 2020, I issued an Order Further Governing Proceeding, giving the Respondent the opportunity to file a short brief and a signed financial statement with supporting evidence (OES Document 9). Also, as indicated earlier in this decision, upon issuance of a second Order to Show Cause in this matter, dated January 19, 2021, the Respondent was given one additional opportunity to submit the required filings, but nothing was filed by the Respondent (OES Document 10).[10]

The record does include copies of Department records that were submitted by the Respondent in response to collection efforts by CRS. On March 13, 2019, the Respondent submitted a financial statement and a variety of supporting documents. The financial statement shows expenses of $2,043.38, presumed to be monthly expenses (OES Document 8, pp. 12-20). On April 9, 2019, the Respondent submitted a completed CRS Financial Statement showing monthly expenses of $2,632.00 along with other supporting documentation (*Id.*at 35-50). The financial statement shows the Respondent reported being employed for a period of nine (9) months and was previously employed for a period of one- and one-half years at Community Services Consortium. The evidence shows CRS conducted a financial assessment of the Respondent's financial statement dated April 9, 2019 (*Id.* at 52-53). CRS's financial assessment showed the Respondent had a monthly take home pay (equivalent to disposable pay) of $2,146, monthly expenses of $1,950, and a monthly surplus of $195.00. Although the Respondent has informally informed this Tribunal that her circumstances have changed since 2019, she has offered no supporting evidence, despite being extended multiple opportunities to do so, for this Tribunal to consider. Without further evidence, the informal information does not independently support the Respondent's assertion in her request for hearing that she was involuntarily terminated from a job.

Having considered the evidence in this record, the Respondent has not established that she is ineligible for garnishment due to involuntary termination followed by reemployment that did not include twelve consecutive months. The evidence in the record shows that as of April 19, 2019, the Respondent was employed as a counselor for nine (9) months. Other than the notation on the Respondent's request for hearing that she was terminated on August 19, 2019, the only other information that the respondent is currently unemployed is included in the informal email communication she sent to the OHA general email address on January 19, 2021. Without relevant and material evidence that supports those assertions, a finding of fact is not established, and the prohibition included in the controlling statute regarding deductions after involuntary separations from employment and reemployment is not currently applicable.[11]

The evidence in this record does establish financial hardship. As indicted previously, the

[10] As noted in Footnote 2, an informal communication was received from the Respondent following issuance of the Order to Show Cause. In response to that informal communication, additional information and reminders were provided to the respondent. As previously indicated, no further communication was received from the Respondent.
[11] While it is obvious that a wage garnishment requires that the Department or Treasury identify an employer upon which the wage garnishment may be served, the possibility that the Respondent is currently unemployed does not preclude the issuance of a decision allowing the Department or Treasury to establish its right to so issue a wage garnishment order in the future. The Department and Treasury are reminded of the statutory provision at 31 U.S.C. § 3720D(b)(6) should it be determined the Respondent was involuntarily terminated and reemployed in the future.

Department's evidence shows the Respondent submitted financial statements on March 13, 2019, and again on April 9, 2019. CRS reviewed the financial statement submitted on April 9, 2019, establishing the Respondent's disposable pay minus reasonable living expenses, leaving the Respondent with a surplus of only $195.00 per month. In its analysis of the financial statement submitted by the Respondent, CRS has identified that Respondent had disposable pay of only $2,146.00 per month. A garnishment at the maximum level allowed under the statute and applicable regulations, would be about $321.90 per month, an amount exceeding the surplus income that CRS identified. Although the Respondent's assertions suggest her financial circumstances may be worse than in April 2019, when CRS completed a financial analysis of the evidence provided, the Respondent has not provided relevant or material evidence that establishes her financial circumstances have indeed worsened. Considering the evidence of record, a wage garnishment not to exceed 5% of the Respondent's disposable pay is justified.

V. Findings of Fact

1. The Department asserts the Respondent incurred a debt owed to the United States in the amount of $25,008.59, as evidenced by the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated January 20, 2020, issued by the United States Department of Treasury, Bureau of Fiscal Service.

2. The Respondent requested a hearing in response to the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings.

3. The debt arose out of an award to the Respondent as a scholarship associated with the Department's Rehabilitation Long-Term Training Program offered by Western Oregon University (WOU), a grantee of the Department. The scholarship amount was $18,293.00, as evidenced in the exit certification and the Centralized Receivables Service (CRS) invoice dated February 12, 2019.

4. The CRS invoice included notice that interest accrues at an annual rate of 1%, that administrative costs include processing and handling of unpaid balances, a penalty will be assessed at the annual rate of 6% on any amount outstanding after 91 days from the invoice date, and if a referral to the U.S. Department of Treasury's Debt Management Services (DMS) is made, there will be an additional administrative fee of up to 30%.

5. The CRS issued a past due notice on March 18, 2019, showing interest accrued in the amount of $16.36. An Installment Agreement (IA) was entered into on May 7, 2019. Past due notices were issued on June 28, 2019, July 30, 2019, September 27, 2019, and October 29, 2019, showing interest accrued in the amount of $17.76, $10.46, $26.36, and $10.58, respectively. The October 29, 2019, past due notice showed the total amount due had been reduced to $18,149.20, a difference of $143.80 from the scholarship amount. On December 10, 2019, CRS issued an IA Termination Notice showing the balance of debt as $19,092.49. The termination notice provided no explanation of the increased debt amount from $18,149.20 to $19,092.49, an unexplained increase of $943.29.

6. The Department provided no comprehensive accounting ledger to establish what interest, administrative costs, penalty, or additional administrative fees were added to the asserted

debt or when those additions increased the amount of the debt. Some of the past due notices provided by the Department evidence specific accruals of interest increased the scholarship amount. These same past due notices provide evidence that payments were made by the Respondent toward reduction of the scholarship amount however, the Department failed to provide an accounting ledger showing when payments were received, in what amounts, and when payments were credited to the balance of the Respondent's scholarship amount.

7. The Department's records establish a debt in the amount of $18,149.20. Subsequent notices identify a balance due more than this amount but fail to adequately explain the asserted debt greater than $18,149.20.

8. The evidence of record proves a wage garnishment in the maximum amount allowable, i.e. 15% of the Respondent's disposable pay, would cause financial hardship for the Respondent.

9. A wage garnishment not exceeding 5% of the Respondent's disposable pay eliminates the financial hardship established by this record.

VI. Conclusion of Law and Order

The Department has established the existence a debt identified by Fed Debt ID L33096645, and Department Account Number CRS-RSA-19-100. The Department's records fail to establish a debt in the amount indicated in the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated January 20, 2020; however, the Department's records do establish a debt in the amount of **$18,149.20**. The Department's records establish a wage garnishment order allowing garnishment of 15% of the Respondent's disposable pay will create a financial hardship for the Respondent but that a wage garnishment not exceeding 5% of the Respondent's disposable pay eliminates the financial hardship established herein. Therefore, the U.S. Department of Education and the U.S. Department of Treasury, Bureau of Fiscal Service is authorized to impose a wage garnishment not to exceed 5% of the Respondent's disposable pay, subject to any applicable restrictions imposed by 31 U.S.C. § 3720D(b)(6).

This decision is a final agency decision. However, pursuant to the Department's regulations at 34 C.F.R. § 34.12, the Respondent may file a request (motion) for reconsideration of this decision. Any such request (motion) will be considered if the request is on the grounds of financial hardship and evidence accompanying the request shows the Respondent's financial circumstances have materially changed since the issuance of this decision and the Respondent's financial circumstances show the amount to be garnished should be reduced. Alternatively, a request (motion) for reconsideration will be considered if evidence not previously considered accompanies Respondent's request (motion) and the evidence demonstrates that Respondent's objection to the existence, amount, or enforceability of the debt should be reconsidered.

Date: August 20, 2021

Angela J. Miranda
Administrative Law Judge