



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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*In the matter of*

**Docket No. 21-39-WA**

**ML**

Salary Overpayment  
Debt ID: 12500044868

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**DECISION GRANTING WAIVER REQUEST**

Respondent has filed a request for a waiver of a \$4,134.27 debt identified by Debt ID 12500044868. Prior to this proceeding, Administrative Law Judge (ALJ) Daniel J. McGinn-Shapiro issued a decision in a pre-offset hearing finding part of this debt valid and part of this debt invalid. Following issuance of that decision, Respondent filed a brief in support of waiving the remaining valid portion of the debt.

With the benefit of Respondent's submissions, I now proceed to decide the waiver request. Based on the following analysis, I find that Respondent has met the burden to justify granting a waiver of the debt.

JURISDICTION

The waiver authority involving former and current employees of the Department was delegated to the Office of Hearings and Appeals (OHA) which, thereby, exercises authority and jurisdiction on behalf of the Secretary of Education to waive claims of the United States against a former or current employee of the Department.<sup>1</sup> The undersigned is the authorized Waiver Official who has been assigned this matter by OHA. Jurisdiction is proper under the Waiver Statute at 5 U.S.C. § 5584.<sup>2</sup>

DISCUSSION

The record established in the related pre-offset hearing, docketed as case 21-40-OF, explains the nature of the debt at issue. In this case, the debt "arose from the Respondent's use of the incorrect pay codes when [Respondent] used advanced annual leave and sick leave during eight

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<sup>1</sup> The Department's policy is set forth in its Handbook for Processing Salary Overpayments. U.S. Department of Education, Administrative Communications System Departmental Handbook, HANDBOOK FOR PROCESSING SALARY OVERPAYMENTS (ACS-OM-04, revised Jan. 2012).

<sup>2</sup> The Office of Management and Budget delegated the authority to waive amounts in excess of \$1,500 to the executive agencies from which claims arose by letter dated Dec. 17, 1996, available at [https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/foia/gc\\_dec17.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/foia/gc_dec17.pdf); see *In re Richard*, Dkt. No. 04-04-WA, U.S. Dep't of Educ. (June 14, 2005) at 1, n.1.

pay periods in 2020 and 2021.”<sup>3</sup> The portion of the debt still at issue, determined to be valid by the ALJ, is that arising from “[voluntary leave transfer program (VLTP)] hours . . . claimed in pay periods 8, 9, and 10 in 2021.”<sup>4</sup>

Waiver of an erroneous salary payment is an equitable remedy. Determining whether waiver is appropriate requires consideration of two factors: (1) the fault standard: whether there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of Respondent, and (2) the equity standard: whether Respondent can show that it is against equity and good conscience for the Federal Government to recover the overpayment.<sup>5</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>6</sup> Where an employee does know an overpayment has occurred, the employee cannot qualify for a waiver, but is expected to set aside money to repay it.<sup>7</sup>

Nothing in the evidence submitted by Respondent indicates any act of fraud or misrepresentation that led to the overpayment in this case. Respondent asserts the timesheet codes for VLTP were entered either by other Department employees or by Respondent acting under the instructions of other Department employees.<sup>8</sup> Respondent indicates that both Respondent and Respondent’s first-line supervisor believed the codes entered for these three pay periods were for advance sick leave and advance annual leave, not VLTP, during the pay periods in question.<sup>9</sup> Respondent has provided copies of emails demonstrating this state of mind contemporaneous with the pay periods in question. Although this state of mind did not render the debt invalid, the ALJ found these assertions “relevant to the question of who was at fault for the improper use of VLTP leave.”<sup>10</sup> Based on the evidence in the record, I find that Respondent satisfies the fault standard.

Second, I turn to the equity standard. An employee must repay a valid debt unless doing so would be inequitable.<sup>11</sup> There are no rigid rules for determining whether repayment is equitable, but factors considered generally include: whether the debt is substantial; whether repayment would be unconscionable in the Respondent’s unique circumstances; whether the debtor has relinquished a valuable right or changed his or her position based on the overpayment; and whether collection of the debt would impose an undue financial burden.<sup>12</sup> The general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>13</sup> The nature of the debt is not

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<sup>3</sup> *In re [ML]*, Dkt. No. 21-40-OF, U.S. Dep’t of Educ. (Mar. 2, 2022) at 1–2.

<sup>4</sup> *In re [ML]*, Dkt. No. 21-40-OF at 8. The decision does not state the dollar amount of the valid debt. Though the Debt Letter identifies a certain debt as “LEAVE SHARE USED M2,” that code is used only for a debt from pay period 15 in 2020, which the ALJ declared invalid. The entries for pay periods 8, 9, and 10 in 2021 are coded as debts for “SICK ADV LEAVE – USED” and credits for “ANN LEAVE USED.” Consequently, the record in this waiver proceeding does not contain sufficient information to calculate the actual dollar amount of the remaining valid debt.

<sup>5</sup> 5 U.S.C. §§ 5584(a), (b)(1); *In re David*, Dkt. No. 05-22-WA, U.S. Dep’t of Educ. (Dec. 14, 2005) at 3–5.

<sup>6</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>7</sup> *Id.*

<sup>8</sup> Respondent Brief in Support of Request for Waiver (Respondent Brief) at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *In re [ML]*, Dkt. No. 21-40-OF at 15.

<sup>11</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

<sup>12</sup> *In re J*, Dkt. No. 17-04-WA, U.S. Dep’t of Educ. (Mar. 23, 2017) at 5 (citing *In re David*, Dkt. No. 05-22-WA).

<sup>13</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

punitive; the debt merely the difference between the amount paid by the Department and the amount the Department should have paid to Respondent in each pay period.

Respondent asserts that repaying the debt in this case would constitute an undue burden. Respondent has provided extensive documentation showing Respondent's financial circumstances, including a detailed accounting of both monthly expenses, and recent unexpected costs such as medical bills, supported by billing statements. Respondent persuasively argues that Respondent's financial circumstances are burdened by ongoing and significant medical challenges. Comparing Respondent's salary with the amount of the debt, I find that Respondent's situation falls squarely within the category of an undue financial burden. I find that commencement of repayments would unconscionably burden Respondent's finances.<sup>14</sup> Repayment in this case would be inequitable, so I find that Respondent has satisfied the equity standard.

Because Respondent has satisfied both the fault and equity standards, I grant the requested waiver.

#### ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent's request for waiver of the remaining valid portion of the debt captioned Debt ID 12500044868 to the United States Department of Education is **HEREBY GRANTED**. Any erroneous garnishment of Respondent's wages to satisfy the waived debt should be returned immediately.

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Charles S. Yordy III  
Waiver Official

Dated: April 19, 2022

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<sup>14</sup> See *In re J*, Dkt. No. 16-27-WA, U.S. Dep't of Educ. (July 29, 2016) at 8 (finding a combination of financial burdens to be a "significant factor" in favor of granting a waiver).