



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of  
**ML,**

**Docket No. 21-45-WA**

Salary Overpayment Waiver Matter

Debt ID: 12780043608

Respondent.

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**DECISION GRANTING WAIVER REQUEST**

Respondent has filed a request for a waiver of a \$9,005.60 debt identified by Debt ID 12780043608. According to Respondent, the debt was incurred as a result of the U.S. Department of Education's erroneous handling of her reassignment. Respondent was reassigned to an IT Specialist position in 2018, but a 2020 audit determined that the Department lacked the legal authority to make such a reassignment.<sup>1</sup> To remedy the situation, the Department reverted her position, title and grade to that which she had before the reassignment, although the Department subsequently announced for and selected Respondent to the role she had been performing.<sup>2</sup>

In support of the waiver request, Respondent has filed a brief and exhibits, including leave and earnings statements, financial records, and the debt letter. 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>3</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.

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<sup>1</sup> Waiver Request at 1–2.

<sup>2</sup> *Id.* at 2.

<sup>3</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).

## DISCUSSION

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.<sup>4</sup> Among other things, that notice must explain the “origin, nature and amount of the overpayment.”<sup>5</sup> It must also include Government records on which the overpayment determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.<sup>6</sup>

In this case, the debt letter asserts that the “overpayment was a result of a correction to a personnel action that was processed by your agency” for 44 pay periods listed in the debt letter, from pay period 2 of 2020 through pay period 19 of 2021.<sup>7</sup> According to Respondent, the debt arose from an audit of hiring actions which determined that the office of Federal Student Aid erroneously assigned Respondent to a higher graded position.<sup>8</sup> Upon reverting Respondent’s position, the Department considered the salary payment for each intervening pay period to include an overpayment.

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>9</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>10</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>11</sup>

Nothing in the evidence submitted by Respondent indicates any act of fraud or misrepresentation that led to the overpayment in this case. The evidence in this case demonstrates that Respondent’s own office was unaware of the erroneous nature of its personnel action. As a result, Respondent’s office had Respondent perform duties at a certain level and with certain pay for almost two years, only later reverting Respondent’s position based on an audit. As a result, 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>12</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

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<sup>4</sup> 34 C.F.R. § 32.3.

<sup>5</sup> *Id.* § 32.3(a).

<sup>6</sup> *Id.* § 32.3(g).

<sup>7</sup> Debt Letter at 1.

<sup>8</sup> Waiver Request at 1–2.

<sup>9</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>10</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>11</sup> *Id.*

<sup>12</sup> *In re Sarah*, Dkt. No. 11-07-WA, U.S. Dep’t of Educ. (May 5, 2011) at 2–3.

collection of the debt would impose an undue financial burden.<sup>13</sup> The general rule requires the employee to repay the debt unless doing so would be inequitable.<sup>14</sup> The nature of the debt is not 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 indicates that she is a single mother and the sole income earner for her family. Respondent also provides extensive documentation showing her financial circumstances, including a detailed accounting of both her usual monthly expenses, and recent unexpected costs such as medical bills, supported by billing statements. Comparing Respondent's salary with the amount of the debt, I find that her situation falls squarely within the category of an undue financial burden. I find that commencement of repayments would unconscionably burden Respondent's finances, especially based on her circumstance of being the sole income earner for her family.<sup>15</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 \$9,005.60 debt to the United States Department of Education captioned Debt ID 12780043608 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: December 6, 2021

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<sup>13</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>14</sup> *In re Sarah*, Dkt. No. 11-07-WA at 2–3.

<sup>15</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); *In re A*, Dkt. No. 15-43-WA, U.S. Dep't of Educ. (Sept. 4, 2015) at 5 (noting that financially providing for a family member is a factor in finding that repayment of a debt would be so burdensome as to be inequitable).