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

PAUL MITCHELL
The School - Green Bay,

Docket No. 20-05-SA

Federal Student Aid Proceeding

ACN: 05-2019-91440

Respondent.

Appearances: Stephen Paul and Lori Paul for Paul Mitchell The School – Green Bay.

Hannah Hodel, Esq. for the Office of the General Counsel, U.S. Department of Education, Washington, DC for Federal Student Aid.

Before: Robert G. Layton, Administrative Law Judge

DECISION

This decision involves an appeal by Paul Mitchell The School – Green Bay (PMGB), a proprietary college in the State of Wisconsin offering programs in hairstyling. PMGB participated in numerous federal student aid programs authorized by Title IV of the Higher Education Act of 1965 (Title IV).[1] Within the U.S. Department of Education (the Department) the office having jurisdiction over, and oversight of these programs is the Office of Federal Student Aid (FSA).

[1] 20 U.S.C. § 1070 *et seq.*

On February 14, 2020, FSA issued a Final Audit Determination (FAD) with two findings. The first finding (Finding 2018-001) alleged that PMGC maintained excess cash in the amount of $1,354 in its Pell Grant account for the 2018-19 award year as well as a cost of funds liability in the amount of $15.00.[2] The second finding (Finding 2018-002) asserted a liability for closed school loan discharges for nine students in the amount of $43,750. The FAD was compiled after PMGC submitted its close-out audit as required under 34 C.F.R. § 668.26(a) and (b). The close-out audit found no material weaknesses at the closed institution.[3]

Subpart H proceedings allow institutions to appeal the results of a final audit determination. When an institution closes, it must submit a close-out audit. Once FSA receives and reviews the independent audit, it will issue a FAD delineating any alleged violations of the Title IV requirements and assess a corresponding liability, if applicable. Once an FAD is issued, the respondent has the burden of proving by the preponderance of the evidence that the Title IV funds it received were lawfully disbursed.[4] If the respondent does not establish that its expenditures of federal funds were correct, it has to return the funds to the Department. Once the respondent is given adequate notice of the demand by FSA in its FAD, the respondent must meet its burden.

ISSUE

The two findings at issue in this proceeding are Finding 18-001 and Finding 18-002. Finding 18-001 concerns PMGC's alleged retention of excess cash in its Pell Grant account.

[22] FSA accepted Respondent's request that PMGC's excess cash liabilities be offset by $265 in administrative cost allowances the institution was entitled to receive for the 2018-19 award year. Consequently, FSA reduced the liability sought for Finding 2018-001 to $1,104.
[3] See ED Ex. 3 at 1.
[4] 34 C.F.R. § 668.116(d).

Finding 18-002 seeks reimbursement for nine students who received closed school loan discharges from the Department.

The issues to be resolved in this decision are:

1. **Has the Department presented a prima facie case for assessing liabilities under Findings 18-001 for alleged retainment of excess funds in its Pell Grant Account, and for assessing liabilities under Finding 18-002 for the reimbursement of closed school loan discharges for nine students?**

2. **Has the Respondent met its burden of proof in demonstrating that the closed school loan discharges should not have been granted?**

3. **May the owners' financial difficulties and subsequent personal bankruptcies be used to ameliorate any established liabilities for violation of the Title IV regulations?**

SUMMARY OF DECISION

The Department has met its burden of production for asserting that excess federal student aid funds were maintained in PMGC's Pell Grant account and that nine students properly received closed school loan discharges from the Department after the institution closed, thereby rendering PMGC liable for the discharged loan amounts. It is beyond the scope of the tribunal's authority to waive the regulatory requirements; consequently, the financial difficulties or equitable arguments raised by Respondent regarding repayment of the closed school loan discharges are moot.

FINDINGS OF FACT

I. FSA AUDIT REVIEW

The February 14, 2020 FAD resulted from a close-out audit conducted by PMGC's independent auditor.[5] The audit was prepared in accordance with the Department's Guide for Audits of Proprietary Schools and for Compliance Attestation Engagements of Third-Party Servicers

[5] PMGC retained the independent auditor Clifton Larson Allen LLP to perform its close-out audit.

Administering Title IV Programs (September 2016).[6] This audit conducted by PMGC's independent auditor covered the audit period January 1, 2018 – February 1, 2019.

The "close out audit report did not reveal any reportable conditions considered to be material weaknesses or any material weaknesses in the design and operation of the internal control systems, or noncompliance with the specific and common program requirements in administration of the Federal student aid programs at PMTSGB in Indianapolis, IN."[7] However, the audit revealed two violations.

The first (Finding 18-001) alleged that PMGB had a federal Pell Grant unsubstantiated cash balance of $1,354.00 for the 2018-19 award year, with an additional cost of funds for the improper retention of funds in the rounded amount of $15.00 for a total liability of $1,369.00.[8]

The second (Finding 18-002) concerned $43,750 in federal Direct loans for closed school loan discharges to nine students.[9] These nine students filed applications for and received approval of the discharge of federal Direct loan funds.[10] Each student certified that they were unable to complete their program of study due to the closure of the institution.[11]

II. PROCESS BEFORE OHA

Respondent PMGB submitted a request for review challenging both Findings # 18-001 and #18-002. The case was assigned to the undersigned as the hearing official and an Order Governing Proceedings was issued establishing the briefing schedule. PMGB and FSA filed their briefs and exhibits.

[6] ED Ex. 3 at p.1.
[7] See ED Ex. 3 at 1.
[8] ED Ex.3 at Appendix B.
[9] ED Ex. 3 at Appendix C.
[10] ED Ex. 3 at 6.
[11] ED Ex. 3 at 6.

The Respondent filed a reply brief and exhibits, and FSA filed a motion to strike Respondent's reply brief and exhibits because Respondent submitted new information/evidence not previously submitted. In its initial brief, Respondent only challenged Student ## 1, 5, and 9. In its reply brief, Respondent challenged Student # 4 and provided new information concerning Student ## 1 and 9. It's motion also requested that if the new evidence were admitted, then FSA would seek to file a reply brief which would be limited in scope to the new proof and exhibits Respondent submitted with its reply brief. The Respondent filed a motion opposing the Department's motion to strike, stating that it only recently received this additional information.

The tribunal denied FSA's motion to strike the newly submitted evidence and granted its alternative request to submit a sur-reply brief, and the Respondent submitted its response to the sur-reply brief. Thereafter, the administrative record was closed.

PRINCIPLES OF LAW

While PMGB has the burden of proof in this proceeding, the Department has the prima facie obligation to show that it has provided adequate notice of its demand to the school.[12] Part of the burden placed on the Department is that it must provide sufficient legal support for its demand. When challenging a finding in an FAD in a Subpart H proceeding, the Respondent has the burden of proving by the preponderance of the evidence that the Title IV funds received were disbursed properly and that the institution complied with program requirements.[13] Before participating in Title IV programs, institutions are required to sign program participation agreements.[14] When an institution enters into this agreement, it agrees to comply with the statutory and regulatory provisions applicable to the Title IV programs it administers, establish

[12] *In re Housatonic Community College*, Dkt. No. 15-36-SP, U.S. Dep't of Educ. (July 26, 2016) at 2 and 34 C.F.R § 668.16(d).
[13] 34 C.F.R. § 668.116(d).
[14] 34 C.F.R. § 668.14(a).

and maintain administrative and fiscal procedures and records "as may be necessary to ensure proper and efficient administration" of Title IV funds, and that it is liable for all improperly spent or unspent Title IV funds.[15]

Finding 18-001

The violation of Title IV regulations alleged is that PMGC maintained excess cash for longer than legally allowed.[16] Federal Pell Grant funds must be disbursed to borrowers by the end of the third business day following the date the institution received the funds. Alternatively, the institution may transfer the funds to its depository account for corrections, adjustments, recoveries, or cancellation. If transferred to this depository account, an institution may maintain an excess cash balance for seven days provided that it does not exceed one percent of the institution's prior year drawdowns. After the seven-day period, any excess cash must be returned to the Department.

According to the FAD, PMGB maintained excess cash in federal Pell Grant funds in the amount of $1,354 for the 2018-19 award year and also charged PMGB $15.00 for the cost of funds. FSA based its finding on its Closed School Discharge Query Report which pulled information for the Department's National Student Loan Data System (NSLDS). PMGB did not challenge the validity of this finding. Instead, the institution requested that the liability be reduced by the $265.00 in administrative cost allowance PMGB could have been entitled to receive for the Pell 2018-19 award year.[17] The Department accepted PMGB's request and reduced the liability owed to $1,104.

The Department met its prima facie case for this finding and Respondent does not contest

[15] 34 C.F.R. §§ 668.14(b)(1), (4), and (25); 34 C.F.R. § 668.116(a) and (d).
[16] 34 C.F.R. § 668.166(a) and (b).
[17] 34 C.F.R. § 690.10(a).

the validity of the remaining liability and therefore has not met its burden of persuasion. Consequently, Respondent remains liable for $1,104 for Finding 18-001.

Finding 18-002

One of the regulatory requirements for participation is that students or parents with PLUS loans who were enrolled at an institution at the time of its closure or who withdrew within 120 days preceding its closure, may apply for a closed institution loan discharge. If the discharge is granted, any amounts repaid will be refunded and the outstanding balance will not be owed by the borrower. Students apply for loan discharges by filing an application, sworn under penalty of perjury, attesting that they met the requirements for a discharge.[18] When a loan discharge is granted, the borrower is relieved of their responsibility to repay the loan and the Department has the authority to recover the discharged amount from the institution and its affiliates or principals.[19] If the student's application complies with the requirements of 34 C.F.R. § 685.214(c), the loan is discharged.[20]

ANALYSIS

DEPARTMENT'S PRIMA FACIE CASE

In Subpart H proceedings, the FSA has the initial burden of production while Respondent carries the burden of proof.[21] To sustain its burden, PMGB must establish by a preponderance of the evidence, that they did not violate the regulations pertaining to excess cash balances and that their students did not receive or improperly received closed school loan discharges.

[18] 34 C.F.R. § 685.214(c)(1).
[19] HEA § 437(c)(1), 20 U.S.C. § 1087(c); 34 C.F.R. §§ 685.402(d)(5) and 685.214(e).
[20] 34 C.F.R. § 685.214(a)(1) and (f)(6).
[21] 34 C.F.R. § 668.116(d); *In re DeMarge College*, Dkt. No. 04-39-SP, U.S. Dep't of Educ. (July 31, 2009); *In re Sinclair College*, Dkt. No. 89-21-S (September 26, 1991)

The Department's obligation to present a prima facie case is satisfied when it informs the institution that: (1) there is a regulatory obligation to repay to the Department Title IV funds and to document the basis for the determination that a liability is owed and (2) the specific reason that the Department asserts that the school did not meet this obligation.[22] By virtue of the issuance of an FAD[23] and its articulation of a violation of the regulations regarding Pell Grant excess cash on hand and closed school loan discharges and the corresponding liability associated with these alleged violations, FSA has presented a prima facie case in the instant proceeding.

SCOPE OF TRIBUNAL'S REVIEW

The tribunal's authority in Subpart H proceedings is proscribed. The remedies available in Subpart H program review proceedings are contractual in nature and allow for recovery of misspent federal student aid funds only.[24] PMGB raises two arguments. The first dispute that generally underlies PMGC's argument regarding Students ## 1,4, 5 and 9 is that these students should not have received a closed school loan discharge. It is incumbent upon PMGB to demonstrate that these students should not have received the loan discharges. FSA states that PMGB has not provided any legal basis for overturning the closed school loan discharges for the nine students at issue. FSA argues that it has conclusively demonstrated that the nine students at issue filed for closed school loan discharges, certified that they met the requirements for discharge, did not complete their programs of study at PMGB prior to its closure, and did not complete their educational programs at other institutions.[25] FSA asserts that PMGB does not dispute that these nine students did not complete their programs of study at the institution before

[22] *See In re Housatonic Community College*, Dkt. No. 15-36-SP, U.S. Dep't of Educ. (July 26, 2016) at 2 and *In re City University of New York, Lehman College*, Dkt. No. 18-38-SP, U.S. Dep't of Educ. (April 22, 2020).
[23] See In
[24] See 34 C.F.R. Part 668; *In re Macomb Community College*, Dkt. No. 91-80-SP, U.S. Dep't of Educ. (June 23, 1993); *In re Phillips Junior College, Melbourne*, Dkt. No. 93-80-SP, U.S. Dep't of Educ. (November 23, 1994).
[25] ED Exs. 1, 6, and 7.

it closed nor does PMGB dispute that these students applied for and received closed school loan discharges. Instead, FSA argues that the main thrust of PMGB's arguments is that these students should not have received closed school loan discharges. According to FSA, it is beyond the authority of this tribunal to determine whether these students should have received loan discharges and that responsibility lies with FSA, as the Secretary's designee. [26] FSA posits that the tribunal should solely be concerned whether a liability should be sustained for this violation if these closed school loan discharges have been shown to be appropriately given to the students. Each student will be addressed individually below.

Student # 1

PMGB states that Student # 1's Instagram account notes that she is attending the Aveda Institute in Milwaukee, WI. PMGB asserts that this student's enrollment makes her ineligible for a discharge as she is enrolled in a program comparable to the program, she attended at PMGB.

FSA states that PMGB did not present any evidence demonstrating that this student ever transferred credits from PMGB which would be an indication that they might not have been eligible for a closed school loan discharge. For Student # 1, the Department's enrollment records show that this student enrolled half-time at another institution. However, FSA asserts that merely enrolling at another institution in a comparable program of study is insufficient to make the student ineligible for a closed school loan discharge. FSA states that PMGB provided no evidence that credits or hours were transferred to complete a comparable program of study. FSA counters PMGB's assertion in its reply brief that this student enrolled at another institution. Finally, FSA asserts that this PMGB former student was not required to participate in an PMGB-established teach-out plan.

[26] 34 C.F.R. § 685.214(a)(1).

PMGB has not met its burden of showing that this student enrolled in a program of study where credits or hours from PMGB were transferred to the new institution. Without evidence demonstrating that both of these elements were met and consequently, the closed school loan discharge liability should not be charged to the school, PMGB's liability for Student # 1 is affirmed.

Student # 4

PMGB states that because this student obtained a cosmetology apprentice permit/license from the State of Wisconsin this student should not have received a closed school loan discharge. PMGB submitted a record of an apprentice license this student received from the Wisconsin Department of Safety and Professional Services**.** PMGB argues that the fact that this student enrolled in an apprentice program is in the process of completing her education by transferring her PMGB credits to this apprentice program.

FSA argues that this cosmetology apprentice license falls short in demonstrating that Student # 4 should not have received the loan discharge. In fact, FSA asserts that PMGB's own evidence indicates the license is inactive.

Whether or not Student # 4 is licensed, PMGB has not met its burden of showing that this student enrolled in a program of study where credits or hours from PMGB were transferred to the new institution. The mere fact that the student obtained a cosmetology apprentice license is not demonstrable of whether the student enrolled in a similar program of study, nor is it proof that credits of hours from PMGB were somehow transferred to obtain an apprentice license. Without evidence demonstrating that both of these elements were met and consequently, the closed school loan discharge liability should not be charged to the school, the liability for Student # 4 is affirmed.

Student # 5

For Student # 5, PMGB states that this student continued their education as an apprentice at Salon Savoy in Green Bay, WI, as indicated by her Facebook account.

For this student, FSA asserts that Respondent's evidence merely shows that this student became a guest services/apprentice at a salon. It does not demonstrate that this student attended another comparable program after PMGB closed. Moreover, the Department's records do not show that this student ever enrolled at another institution.

PMGB has not met its burden of showing that this student enrolled in a program of study where credits or hours from PMGB were transferred to the new institution. The mere fact that the student became an apprentice at a privately-owned salon does not establish that the student enrolled in a similar program of study, nor is it proof that credits of hours from PMGB were somehow transferred to obtain an apprentice license. Without evidence demonstrating that both of these elements were, the liability for Student # 5 is affirmed.

Student # 9

Like Student # 4, PMGB states that because Student # 9 obtained a cosmetology apprentice permit/license from the State of Wisconsin this student and completed her apprenticeship. should not have received a closed school loan discharge. PMGB further asserts that the liability for this student should be reduced by $2,424.39 because she received a refund in the amount of $2,325.61.[27]

PMGB has not met its burden of showing that this student enrolled in a program of study where credits or hours from PMGB were transferred to the new institution. The mere fact that the

[27] Student # 9 received $1,750 in a subsidized federal Direct Student Loan and $3,000 in an unsubsidized federal Direct Student Loan. ($1,750 + $3,000 = $4,750 - $2,325,61 = $2,424.39).

student obtained a cosmetology apprentice license is not demonstrable of whether the student enrolled in a similar program of study, nor is it proof that credits of hours from PMGB were somehow transferred to obtain an apprentice license. Additionally, the fact that this student received a refund from PMGB does not relieve the institution of having to pay back the entirety of the federal student aid loan the student received. Title IV loans are intended to cover both tuition and the cost of attendance including living expenses. Whether or not the student had a portion or even a majority of the funds refunded to her for cost of attendance, without evidence demonstrating that both of these elements were met and therefore the school should not face closed school loan discharge liability. The liability for Student # 9 is affirmed.

PMGB's Owners Bankruptcy and Financial Inability to Pay

The second argument put forth by PMGB is an equitable argument regarding the financial difficulties encountered by the institution's owners. PMGB states that its owners have filed for bankruptcy and do not have the funds to pay the liabilities owed. In the institution's reply brief, PMGB's owners acknowledge that their bankruptcy does not absolve them of liability in this proceeding; however, they continue to assert financial hardship as an equitable argument towards waiving the liability alleged in the FAD.

This tribunal cannot waive regulatory requirements for institutions participating in the Title IV financial aid programs.[28] While unfortunate, the fact that an institution and/or its owners may suffer financial difficulties – even bankruptcy – cannot be considered by the tribunal as a mitigating factor regarding the assessment of liability in a Subpart H proceeding.[29] Even

[28] 34 C.F.R. § 668.117(a).

[29] *In re Gulf Coast Trades Center*, Dkt. No. 89-16-S, U.S. Dep't of Educ. (October 19, 1990) (Decision of the Secretary), *In re Amarillo West Texas Barber Styling College*, Dkt. No. 91-90-SA, U.S. Dep't of Educ. (June 7, 1994), *In re Ohio College of Massotherapy*, Dkt. No. 19-25-SA, U.S. Dep't of Educ. (January 29, 2020), *In re Visions in Hair Design, Institute of Cosmetology*, Dkt. No. 13-52-SP, U.S. Dep't of Educ. (November 20, 2013), *In re Barber-Scotia College*, Dkt. No. 12-44-SA, U.S. Dep't of Educ. (January 2, 2013), and *In re Willoughby-East Lake School of Practical Nursing*, Dkt. No. 09-02-SP, U.S. Dep't of Educ. (July 1, 2009) ("While the Secretary has

PMGB stated that the owners' bankruptcy could not be used to mitigate or erase the liability owed. It follows that the owners' financial difficulties in general cannot be used as well to avoid payment of liability in a Subpart H proceeding.

PMGB'S EVIDENTIARY BURDEN NOT MET

PMGB bears the burden in this proceeding to demonstrate that it did not violate the regulatory requirement concerning Pell Grant excess cash balances and that the institution is not liable to reimburse the Department for the closed school loan discharges to the nine students at issue.[30] PMGB did not meet this evidentiary burden. First, the institution did not contest the validity of Finding 2018-001; it merely asked for a reduction in liability to which the Department agreed. Second, PMGB did not demonstrate that the nine students at issue under Finding 2018-002 were ineligible for closed school loan discharges, and did not establish any defenses to shield it from closed school loan discharge liability.

CONCLUSIONS OF LAW

1. **The Department provided a prima facie case for assessing liabilities under Findings 18-001 and 18-002.**

2. **PMGB did not meet its burden of persuasion that it should not be held liable for the closed school loan discharges granted by the Department.**

3. **Equitable arguments such as PMGB's owners' financial difficulties may not be considered by the tribunal. The tribunal may not rule regulations invalid. Consequently, equitable arguments such as financial hardship surrounding proven violations are moot.**

ORDER

plenary authority to reduce or waive fines imposed as punishment under 34 C.F.R. Part 668 Subpart G, this authority is not analogous to the tribunal's authority in a Subpart H proceeding. This tribunal has no authority to waive financial liability…")

[30] *In re Sinclair Community College*, Dkt. No. 89-21-S, U.S. Dep't of Educ. (Sept. 26, 1991) (Decision of the Secretary); *In re Institute of Medical Education*, Dkt. No. 13-58-SP, U.S. Dep't of Educ. (January 13, 2014).

PMGB is liable for and is **ORDERED** to repay to the United States Department of Education the sum of $44,854 in liabilities for Findings 18-001 and 18-002.

DATE OF ORDER: MAY 2, 2023

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Robert G. Layton
Administrative Law Judge

NOTICE OF DECISION AND APPEAL RIGHTS-SUBPART H

This is the initial decision of the hearing official pursuant to 34 C.F.R. § 668.118. The regulation does not authorize motions for reconsideration. The following language summarizes a party's right to appeal this decision as set forth in 34 C.F.R. § 668.119.

An appeal to the Secretary shall be in writing and explain why this decision should be overturned or modified. An appeal must be filed within 30 days from receipt of this notice and decision. If an appeal is not timely filed, by operation of regulation, the decision will automatically become the final decision of the Department.

An appeal to the Secretary shall be filed in the Office of Hearings and Appeals (OHA). The appealing party shall provide a copy of the appeal to the opposing party. The appeal shall clearly indicate the case name and docket number.

A registered e-filer may file the appeal via OES, the OHA's electronic filing system. Otherwise, appeals must be timely filed in OHA by U.S. Mail, hand delivery, or other delivery service. Appeals filed by mail, hand delivery, or other delivery service shall be in writing and include the original submission and one unbound copy addressed to:

Hand Delivery or Overnight Mail*	U.S. Postal Service*
Secretary of Education c/o Docket Clerk Office of Hearings and Appeals U.S. Department of Education 550 12th Street, S.W., 10th Floor Washington, DC 20024	Secretary of Education c/o Docket Clerk Office of Hearings and Appeals U.S. Department of Education 400 Maryland Avenue, S.W. Washington DC 20202

These instructions are not intended to alter or interpret the applicable regulations or provide legal advice. The parties shall follow the regulatory requirements for appealing to the Secretary at 34 C.F.R. § 668.119. Questions about the information in this notice may be directed to the OHA Docket Clerk at 202-245-8300.

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