



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF HEARINGS AND APPEALS

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In the Matter of

**Docket No. 23-33-WA**

**E H,**

Salary Overpayment  
Waiver Matter

Debt ID: 33041951252

Respondent.

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**DECISION DENYING WAIVER REQUEST**

Respondent has filed an overpayment waiver request seeking a waiver of a \$2,975.84 debt identified by Debt ID 33041951252. In support of the waiver request, Respondent has provided a copy of the debt letter and a personnel form. With the benefit of Respondent's submissions, I now proceed to decide the waiver request. Based on the following analysis, I deny the waiver request.

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.

DISCUSSION

Prior to initiating a payroll deduction, the Department is required to provide a written notice to the employee.<sup>2</sup> Among other things, that notice must explain the "origin, nature and amount of the overpayment."<sup>3</sup> It must also include Government records on which the overpayment

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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> 34 C.F.R. § 32.3.

<sup>3</sup> *Id.* § 32.3(a).

determination was made, or an explanation of how such records will be made available to the employee for inspection and copying.<sup>4</sup>

In this case, the debt letter asserts that the “overpayment was a result of deductions paid by your agency on your behalf” for 14 pay periods in calendar year 2023.<sup>5</sup> According to Respondent, the debt arose because Respondent’s federal employee health benefits were not properly maintained when Respondent commenced employment at the U.S. Department of Education. Although not explicitly stated anywhere in Respondent’s submissions, it appears the Department is treating the unpaid bi-weekly premiums as an overpayment because the Department erroneously failed to deduct them.

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>6</sup>

First, to meet the fault standard, an employee must neither know, nor should have known, of the erroneous payment.<sup>7</sup> An employee fails the fault standard where, based on the employee’s circumstances including experience with the federal government, the employee has records at his or her disposal that would indicate a salary overpayment.<sup>8</sup> Federal employees “have a duty to review and react to errors that are clear on the face of a leave and earnings statement.”<sup>9</sup>

Respondent asserts that “I had no reason to suspect that there was a problem, as I saw no lapse in coverage because I was able to continue using my insurance for appointments and prescriptions.”<sup>10</sup> However, past cases make clear that employees of the Department have an affirmative responsibility to review their leave and earnings statements.<sup>11</sup> A complete absence of any deduction for health insurance premiums is an error that Respondent should have recognized. Therefore, I find that Respondent fails the fault standard.

Failure to satisfy either standard is a conclusive basis to deny a waiver. Because Respondent has failed to satisfy the fault standard, I will deny the waiver request. I also note that Respondent has failed to meet the equity standard. Respondent states only that repayment of the debt “is unfair and would create a financial hardship.”<sup>12</sup> Nevertheless, 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 punitive; the debt is merely the difference between the amount paid by the Department and the

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<sup>4</sup> *Id.* § 32.3(g).

<sup>5</sup> Debt Letter at 1.

<sup>6</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>7</sup> *In re M*, Dkt. No. 19-83-WA, U.S. Dep’t of Educ. (Feb. 25, 2020) at 4, and cases cited.

<sup>8</sup> *Id.* at 5.

<sup>9</sup> *Id.* (and cases cited).

<sup>10</sup> Waiver Request at 1.

<sup>11</sup> *In re M*, Dkt. No. 19-83-WA; *In re E*, Dkt. No. 15-61-WA, U.S. Dep’t of Educ. (Feb. 6, 2016) (“The rule has consistently been that an employee is required to check his or her leave and earnings statement (LES) and an employee should know of an overpayment if there is an indication of the overpayment on the employee’s LES.”)

<sup>12</sup> Waiver Request at 1.

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

amount the Department should have paid to Respondent in each pay period. In past cases, waiver officials have held, “[t]here is no doubt that repayment of any sum may be inconvenient and unplanned in terms of any household budget, but that is not tantamount to showing a financial burden such that the equities call for a waiver.”<sup>14</sup> Respondent has not demonstrated any specific hardship that would make repayment of the debt inequitable. Therefore, I find that Respondent does not meet the equity standard.

Because Respondent has not met both the fault and equity standards, I will deny the waiver request. This decision constitutes a final agency action.<sup>15</sup>

#### ORDER

Pursuant to the authority at 5 U.S.C. § 5584, Respondent’s request for waiver of the \$2,975.84 debt to the United States Department of Education captioned Debt ID 33041951252 is **HEREBY DENIED**.

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Charles S. Yordy III  
Waiver Official

Dated: December 13, 2023

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<sup>14</sup> *In re E*, Dkt. No. 15-07-WA, U.S. Dep’t of Educ. (Mar. 31, 2015) at 6 (quoting *In re April*, Dkt. No. 12-23-WA, U.S. Dep’t of Educ. (July 11, 2012) at 9).

<sup>15</sup> Under 34 C.F.R. § 32.6(b), an employee who has requested a waiver under § 32.4(b) may request a pre-offset hearing within 10 days of receipt of a decision denying that waiver.