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Opinion No. 11-26

Vocational Rehabilitation Services Comparable Benefits Requirement

QUESTION

For the purpose of eligibility for vocational and other training services in institutions of higher education under the Vocational Rehabilitation Services program administered by the Department of Human Services, Division of Rehabilitation Services, does the Tennessee HOPE scholarship qualify as a "scholarship based on merit" so as to be excluded from being a "comparable benefit" under state regulations?

OPINION

No. A Tennessee HOPE scholarship does not qualify as a "scholarship based on merit" so as to meet the criteria for exclusion from "comparable benefits" for purposes of determining eligibility for vocational and other training services in institutions of higher education under the Vocational Rehabilitation Services program.

ANALYSIS

The Vocational Rehabilitation Program is a federally funded program administered by the Department of Human Services, Division of Rehabilitation Services. Prior to providing services to an eligible individual under this program, the Division must determine whether comparable services and benefits are available under any other program. 29 U.S.C. § 721(a)(8)(A). If comparable services or benefits exist under any other program and are available to the individual, the Division and the individual must use those comparable services or benefits to meet, in whole or part, the cost of the vocational rehabilitation services. 34 C.F.R. § 361.53(c)(1); Tenn. Comp. R. & Regs. 1240-08-05-.03(1) (2009). For the purpose of determining eligibility for vocational and other training in institutions of higher education, the Division's regulation provides:

> Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by the state entity and the individual to secure grant assistance in whole or part from other sources to pay for the training. Institutions of higher education

> include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. *Comparable benefits do not include awards and scholarships based on merit.*

Tenn. Comp. R. & Regs. 1240-08-05-.03(2) (2009) (emphasis added). *See also*, 34 C.F.R. § 361.5(a)(10)(ii).

You have asked whether the Division's classification of the Tennessee HOPE scholarship as a comparable benefit is in conflict with the exclusion for scholarships based on merit. The Division has interpreted the term "merit scholarship or award" as one in which eligibility is not based upon financial need or meeting standard qualifications applicable to all who apply, but is instead based upon an individual's outstanding or unique talents, skills, and abilities in, for example, academics, the arts or athletics. It is our opinion that the Division's determination that the Tennessee HOPE scholarship is not a "scholarship based on merit" is not plainly erroneous or inconsistent with state or federal regulations.

Neither state nor federal regulations specifically define the term "scholarships based on merit." Further, our research did not find any decisions in which a court has construed the term "scholarships based on merit" in the context of determining eligibility for vocational rehabilitation services. Accordingly, in ascertaining the meaning of this term as used in the Division's regulation, the same principles that govern the construction of state statutes would apply. *Houghton v. Aramark Educ. Resources, Inc.*, 90 S.W.3d 676, 679 (Tenn. 2002). In construing a statute, a court looks at the words of the statute and "must (1) give these words their natural and ordinary meaning, (2) consider them in the context of the entire statute, and (3) presume that the General Assembly intended that each word be given full effect." *Waldschmidt v. Reassure America Life Ins.*, 271 S.W.3d 173, 176 (Tenn. 2008). In addition, in construing an administrative regulation, an agency's interpretation will be afforded deference by the courts and become controlling weight unless plainly erroneous or inconsistent with the regulation. *Bellsouth Advertising & Publishing Corp. v. Tennessee Regulatory Authority*, 79 S.W.3d 506, 514 (Tenn. 2002).

The Division's interpretation of its regulation to require a scholarship based on merit to be one awarded on the basis of academic, athletic or artistic merit is not plainly erroneous or inconsistent with the regulation. Rewarding talent is the primary objective of merit scholarships. *See Evans v. Kentucky High School Athletic Assn.*, No. 3:09-CV-953-H, 2010 WL 1643758 (W.D. Ky. Apr. 20, 2010) ("Merit-based aid is like an academic scholarship; it is financial aid that is based solely on academic and/or test performance."). Accordingly, the next question is whether the Division's application of this definition to the Tennessee HOPE scholarship is plainly erroneous or inconsistent with its regulation.

The Tennessee HOPE scholarship program is a state program administered by the Tennessee Student Assistance Corporation. Tenn. Code Ann. § 49-4-903. The Tennessee HOPE scholarship program was created to fulfill the requirement in Tenn. Const. art. XI, § 5, that the net proceeds from the state lottery first be used for the purpose of providing financial assistance

to Tennessee citizens to attend post-secondary educational institutions located within the State. Tenn. Code Ann. §§ 49-4-901, 49-4-902(36). Students wishing to receive a Tennessee HOPE scholarship must meet several requirements, including minimum academic requirements. Tenn. Code Ann. §§ 49-4-904 through 49-4-913.

While there are minimum qualifications to be eligible for a HOPE scholarship, there is no expressed purpose or legislative intent that the primary purpose of the Tennessee HOPE scholarship is to reward talent or special achievement. On the contrary, the Tennessee HOPE scholarship is provided to all students who meet the eligibility requirements. Therefore, it is our opinion that the Division's determination that the Tennessee HOPE scholarship does not qualify as a "scholarship based on merit" so as to be excluded from being a "comparable benefit" is not plainly erroneous or inconsistent with state or federal regulations.

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