

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 01137-17

**NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY,**

Petitioner,

v.

KATRINA MILKOWSKI,

Respondent.

Philip Levitan, Esq., appearing for petitioner

Katrina Milkowski, pro se,

Record Closed: February 16, 2017

Decided: February 17, 2017

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE

Respondent, Katrina Milkowski (Milkowski or respondent), signed an application/promissory note for the purpose of paying tuition to Roman Academy of Beauty (Roman). She failed to make the proper installment payments when they became due and defaulted. Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA) was the guarantor of the loan and subsequently purchased it from the lender. NJHESAA seeks an order directing the employer of Mikowski to deduct from her wages, an amount equal to fifteen percent of her disposable wages and to remit this

amount to petitioner until such time as respondent's student loan has been repaid. See 20 U.S.C.A. 1095a(a), 34 C.F.R. 682.410(b)(9)(i)(A) (2003).

Respondent acknowledges acquiring the loan. She states that she attended Roman for only two months and has made some payments on the loan.

PROCEDURAL HISTORY

On or about August 31, 2016, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed a timely appeal to the Notice of Administrative Wage Garnishment. The matter was transmitted to the Office of Administrative Law on January 17, 2016. Respondent requested a hearing by written statement. On January 30, 2017, I sent the parties a letter stating that any additional documentation that they would rely on be submitted to me by February 15, 2017. Petitioner submitted a corrected affidavit on February 6, 2017. Respondent submitted documents on February 16, 2017 on which date the record closed.

FINDINGS OF FACT

Based upon the testimony of respondent, the affidavit of Janice Seitz, Program Officer with the NJHESAA as well as the enclosures submitted therewith—that is, a copy of the loan application executed by petitioner, a copy of the voluntary monthly repayment arrangement and the computer information documenting the loan history, including interest accrued and the documents of respondent, I make the following **FINDINGS OF FACT:**

1. On or about January 21, 2000, respondent executed an application/ promissory note for a guaranteed student loan for the purpose of paying tuition at Roman. Summit Bank in reliance upon the application/promissory note disbursed the sum of \$5,275.65

2. Pursuant to the terms of the promissory note payments became due and owing under the guaranteed student loans.
3. Respondent defaulted on the aforesaid student loans by failing to make the required payments.
4. Petitioner is the state agency in New Jersey designated as a guarantor agency for federal and state funded student loans.
5. As a result of the default of respondent, petitioner was required to honor its guarantee.
6. At the time petitioner acquired the loan, the amount of \$6,438 was due and owing.
7. Pursuant to the terms of the loan, interest has continued to accrue.
8. On or about August 31, 2016, petitioner, acting pursuant to 20 U.S.C.A. 1095(a) (a) et seq. and 34 C.F.R. 682.410(b)(9)(i)(A), issued a Notice of Administrative Wage Garnishment directing that fifteen percent of respondent's disposable wages be remitted to petitioner until such time as the respondent's student loans have been repaid.
9. Respondent filed a timely appeal of NJHESAA's Notice of Administrative Wage Garnishment.
10. The amount of \$8,343.50 is presently due and owing.
11. Respondent states that she did not attend Roman for very long, two months, and believes that therefore she does not owe the entire balance. She did not receive a refund from Roman. Respondent does not specify if she withdrew from Roman or stopped attending.

12. Respondent submitted copies of monthly loan payment made by her from October 2010 to March 2011 in the amount \$68. She also submitted a copy of a payment of \$825 on March 20, 2007.

LEGAL ANALYSIS AND CONCLUSIONS

NJHESAA is a state-designated agency responsible for administration of the loan guarantee program for federal and state funded student loans. N.J.A.C. 9A:10-1.4. After purchasing an overdue loan from a lender, NJHESAA may collect the debt by appropriate means, including garnishment of wages. The debtor is entitled to request an administrative hearing before an independent hearing officer prior to issuance of a garnishment order. 20 U.S.C.A. 1095a(a). Federal regulations allow the borrower to dispute the existence or amount of the loan, 34 C.F.R. 34.14(b), to demonstrate financial hardship, 34 C.F.R. 34.14(c), or to raise various defenses based on discharge of the underlying debt, 34 C.F.R. 682.402.

A guaranty agency “may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement,” provided, however, that the individual be granted an opportunity for a hearing conducted by an independent hearing official such as an Administrative Law Judge. 20 U.S.C.A. 1095a (a) (5). A guaranty agency is a nonprofit organization or state agency, such as NJHESAA, that “has an agreement with the United States Secretary of the Department of Education to administer a loan guarantee program[.]” N.J.A.C. 9A:10-1.3(a). New Jersey statutes and regulations require the NJHESAA to purchase certain defaulted student loans and permit NJHESAA to seek garnishment of wages as one method of repayment. N.J.S.A. 18A:71C-6; N.J.A.C. 9A:10-1.14.

When a lender submits a claim for purchase by NJHESAA of a defaulted loan, NJHESAA first determines the legitimacy of the claim for purchase by NJHESAA of a defaulted loan and ensures that all federal and state requirements for default aversion have been followed. If NJHESAA determines that “due diligence” has been met and

purchases the loan from the lender, NJHESAA then seeks to collect on the debt. N.J.A.C. 9A:10-1.4(b) (7) & (8); N.J.A.C. 9A:10-1.14(b).

Initially, NJHESAA bears the burden of proving by a preponderance of the competent, relevant and credible evidence the existence and amount of the debt. 34 C.F.R. §34.14(c) and (d); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962. Here, NJHESAA produced adequate documentation establishing the existence of the debt and the amount currently in default. Since petitioner has sustained its burden of proof, respondent must demonstrate, by a preponderance of the evidence that either the debt does not exist, the amount is incorrect or that the loan should be discharged. 34 C.F.R. 34.14. Milkowski seeks to avoid collection by pleading that she only attended Roman for two months and that she has made loan payments.

Respondent has failed to demonstrate that the loan should be discharged. She admits that she applied for and received the loan. She did not supply information as to whether she withdrew from Roman or just stopped attending. She did not receive a refund from Roman. Although respondent made some payment the payments documents she submitted were from 2007, 2010 and 2011. Those documents showed that there remained an outstanding balance.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has met its burden to prove the existence and the amount of the claimed debt, and that repayment thereof is in default. Respondent failed to provide documentation to support her claim that the loan should be discharged.

ORDER

It is **ORDERED** that the total amount due and owing by respondent shall be the subject of a wage garnishment in an amount not to exceed 15% of respondent's disposable wages.

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(N) (2010).

February
2017

17,

DATE

KIMBERLY A. MOSS, ALJ

Date Mailed to Parties:

ljb

EXHIBITS

For Petitioner

P-1 Agency Documents

For Respondent

R-1 Documents submitted by Respondent