

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 04749-18

AGENCY DKT. NO. N/A

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

Petitioner,

v.

VICTORIA DORSEY,

Respondent.

Russell P. Goldman, Esq., for petitioner

No appearance by or on behalf of Victoria Dorsey, respondent, pro se

Record Closed: June 19, 2018

Decided: July 3, 2018

BEFORE **JOHN S. KENNEDY, ALJ:**

STATEMENT OF THE CASE

Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA or petitioner) seeks an order garnishing the wages of respondent, Victoria Dorsey (respondent), and to remit this amount to petitioner until such time as respondent's student loan has been repaid.

PROCEDURAL HISTORY

Respondent requested a telephone hearing, and the matter was transmitted to the Office of Administrative Law (OAL) on March 26, 2018. On April 16, 2018, and April 17, 2018, the OAL attempted to contact respondent to schedule a prehearing telephone conference. As of April 23, 2018, respondent had not contact the OAL and a letter was sent to her advising that a prehearing telephone conference was scheduled for May 4, 2018. Respondent failed to participate in the May 4, 2018, telephone conference. A notice was sent to respondent of a second prehearing telephone conference scheduled for May 23, 2018. She again failed to participate in the telephone conference and an in-person hearing was scheduled for June 19, 2018.

On June 19, 2018, respondent failed to appear for the hearing. Several attempts were made to contact respondent by telephone. The matter proceeded and the record closed.

STATEMENT OF THE ISSUE

The issue is whether petitioner has established, by a preponderance of the credible evidence, that it is entitled to an administrative wage garnishment.

FINDINGS OF FACTS

Based upon the evidence provided, including the testimony of **Brian Lyszkiewicz**, Student Loan Investigator with NJHESAA, and the affidavit of Janice Seitz, Program Officer with NJHESAA and the enclosures submitted therewith—including a copy of the Federal Stafford Loan Master Promissory Note executed by respondent; NJHESAA's Claim Form; computer information documenting the loan history, including interest accrued; and respondent's Request for Hearing—I make the following **FINDINGS OF FACT**:

1. On or about August 20, 1996, respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to

Atlantic Community College. As a result, Educaid disbursed the sum of \$500.

2. On or about October 7, 1996, respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to Atlantic Community College. As a result, Educaid disbursed the sum of \$1,700.
3. On or about April 22, 1997, respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to Atlantic Community College. As a result, Educaid disbursed the sum of \$550.
4. Pursuant to the terms of the promissory note, payment became due and owing on or about August 21, 1998.
5. Respondent, however, failed to make the aforesaid payment and thus defaulted on the loan.
6. Petitioner is the State agency in New Jersey designated as a guarantor agency for federal and state funded student loans.
7. As a result of respondent's default, petitioner was required to honor its guarantee, and acquired said loan for the amount of \$3,196.21.
8. Interest continued to accrue pursuant to the promissory note, and collection costs have also been assessed.
9. On or about December 27, 2017, NJHESAA, acting pursuant to 20 U.S.C. §1095(a) et seq. and 34 C.F.R. §682.410(9), issued a Notice of Administrative Wage Garnishment to respondent.
10. Respondent timely filed this appeal of NJHESAA's Notice, objecting to the garnishment of 15% of her disposable pay claiming it would cause a

financial hardship. No documentation to support respondent's claim was attached to the request.

11. As of approximately June 18, 2018, \$4,028.39 was due and owing on the loan. This amount includes the principal amount of the claim, interest accrued and \$788.57 in collection costs.
12. To date, respondent has not produced any documentation to support her objection to NJHESAA's proposed wage garnishment.

I **FIND** that petitioner has shown by a preponderance of evidence that the debt of respondent exists. Further, I **FIND** that the debt is as calculated by petitioner and that the debt is delinquent.

LEGAL DISCUSSION AND CONCLUSION

NJHESAA is a state-designated agency responsible for administration of the loan guarantee program for federal and state funded student loans. N.J.S.A. 18A:71A-1 to -34; 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. §1095(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. §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). Pursuant to New Jersey statute and regulation, NJHESAA is required to purchase certain defaulted student loans and 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, the Authority first determines the legitimacy of the claim for purchase by the Authority 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, it 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. Here, respondent has failed to meet this burden. While petitioner objected to a garnishment of 15% of her disposable pay because it would result in a financial hardship, she failed to make an appearance for the hearing and offered no evidence whatsoever to support her objection.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has proven the existence and the amount of the claimed debt, and that repayment thereof is in default. Respondent failed to support her claim of extreme financial hardship which could offset the obligation she undertook voluntarily.

APPENDIX

WITNESSES

For Petitioner:

Brian Lyszkiewicz – Student Loan Investigator

For Respondent:

None

LIST OF EXHIBITS

For Petitioner:

- P-1 Affidavit of Janice Seitz
- P-2 Request for Hearing
- P-3 Promissory Notes
- P-4 Computer information documenting the loan history

For Respondent:

None