State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 4750-18

AGENCY NO. HESAA

NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY

Petitioner,

v.

MELISSA PEREZ,

Respondent.

Alvin L. Darby, Esq., for petitioner

Melissa Perez, respondent, pro se, appearing via telephone

Record Closed: June 4, 2018 Decided: June 20, 2018

BEFORE **EDWARD J. DELANOY, JR.**, ALAJ

STATEMENT OF THE CASE

The **New Jersey Higher Education Student Assistance Authority (HESAA, the agency**), **petitioner**, acting under authority of 20 U.S.C.A. Sec. 1095(a) and (b) and 34 C.F.R. 682.410(b)(9) moves for an order of wage garnishment against respondent for default in payments.

Respondent, Melissa Perez, contested this appeal by the agency on the grounds that she alleges that she does not owe the full amount shown because she repaid some or all of this loan.

Today's decision grants the agency's petition to reimpose a previously established garnishment.

PROCEDURAL HISTORY

This is an appeal brought by the agency, NJHESAA, seeking to garnish the wages of respondent. It was filed in the Office of Administrative Law (OAL) on March 29, 2018. Respondent Perez challenges the proposed garnishment. The hearing convened on June 4, 2018, and on that date the record closed.

ANALYSIS OF THE RECORD

Background:

The agency presented its factual case through its witness, **Brian Lyszkiewicz**, Student Loan Investigator, NJHESAA, accompanied by exhibits, none of which were contested:

Mr. Lyszkiewicz testified that he himself was familiar with all the books and records involved in the case. He offered the following factual background through his testimony in support of exhibits admitted in evidence:

The lender was Sallie Mae, and the sum of $15,376 was disbursed on respondent's behalf. Perez failed to make any voluntary payments on the loan, and as result, payments became due and owing thereon on or about January 1, 2008, and default was entered on June 1, 2008. On or about September 17, 2009, the loan was purchased by HESAA, and at that time, the sum of $16,901.34 was due and owing.

Subsequent to that time, the only payments made by or on respondent's behalf were as the result of garnishments or offsets from respondent's federal income tax refunds, as follows: On May 6, 2011, $326; May 1, 2014, $1,202; May 1, 2015, $868; and May 5, 2016, $522; totaling $2,918. (P-2.)

On or about January 9, 2018, HESAA issued a Notice of Administrative Wage Garnishment. Perez appealed on or about January 29, 2018. HESAA alleges that the sum of $20,207.03 is currently due, along with collection costs of $4,843.05. Therefore, the total amount due and owing is $25,050.08. Here the matter stands, with the garnishment paused to await a decision.

Melissa Perez testified that she disputed the amount due to HESAA as her total student debt, four loans owed to Navient, were collected by credit counsellors Allied Interstate, LLC (Allied), in August 2016. Perez paid Allied $15,000 on August 25, 2016, to resolve all of her outstanding due and owing debts. She believes that one of the four loans owed to Navient is the loan HESAA is attempting to collect herein. Her credit report reflects that 100 percent of the loan was repaid (R-2; R-3), and the discharged amount ($24,161.36) was included as part of her 2016 income taxes. (R-4.) Perez agreed that the creditor listed in the 1099 form was Navient, and not HESAA. (R-4.)

Arguments of the parties:

Petitioner, HESAA, argues that it never received any of the $15,000 paid by Perez to Allied to resolve her debts. HESAA is a different creditor than Navient, and while Navient may have discharged a debt of respondent's, HESAA certainly did not. In addition, the statement of the credit report company indicates only that the sum of $16,901 was the amount due from respondent as of September 2009. HESAA never reported this loan paid in full to any credit company. Respondent did not submit any necessary supporting data to show the HESAA loan was somehow discharged. The agency contends that its information shows that the amount garnished is based upon what respondent owes. Consequently, the agency asks for an order resuming the garnishment.

Respondent, Melissa Perez, asks that her position: that she disputed the amount due to HESAA, as her total student debt, four loans owed to Navient, were collected by Allied, and the HESAA loan was resolved by Allied, be gleaned from the written record. However, beyond the assertion of her dispute, she has not submitted further documentation or argument at hearing to substantiate her position.

Findings of Fact:

I FIND that no material facts which are now of record from either side are in dispute, only their legal import is contested.

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Conclusions of Law

Burden of Proof:

The burden of proof falls on the agency in enforcement proceedings to prove violation of administrative regulations, Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987). The agency must prove its case by a preponderance of the credible evidence, which is the standard in administrative proceedings, Atkinson v. Parsekian, 37 N.J. 143 (1962). Precisely what is needed to satisfy the standard must be decided on a case-by-case basis. The evidence must be such as to lead a reasonably cautious mind to a given conclusion, Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958). Preponderance may also be described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power, State v. Lewis, 67 N.J. 47 (1975). Credibility, or more specifically, credible testimony, in turn, must not only proceed from the mouth of a credible witness, but it must be credible in itself, as well, Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954).

However, where, as here, a respondent borrower offers an affirmative defense, claiming “they do not owe the full amount shown because some or all of the loan was

repaid," the burden of persuasion rests on that respondent throughout the proceeding, as does the "burden of production" and going forward on that issue. Nevertheless, this burden of production is "so light as to be little more than a formality." State v. Segars, 172 N.J. 481, 494 (2002). All that is needed is "a genuine issue of fact framed with sufficient clarity so that the other party has 'a full and fair opportunity' to respond.'" Id., at 494-495. Consequently, once a prima facie case is established, the burden of going forward with countering proofs shifts (but never the burden of persuasion). Cf. N.J.R.E.101(b)(2)

Applying the Law to the Facts:

The agency has carried its burden of persuasion:

Under authority of the provisions of 20 U.S.C.A. Sec. 1095(a) and (b) and 34 C.F.R. 682.410(b)(9)(i)(M) and (N), hearing was held before the undersigned. During this proceeding, the agency, NJHESAA, was required to show by a preponderance of evidence: (a) that the debt exists, (b) that it exists in the amounts the agency has calculated, and (c) that the debtor is delinquent. This the agency has done.

In reply, respondent has not carried her burden of affirmatively demonstrating by a preponderance of evidence that the amount heretofore garnished is improper because the HESAA loan was resolved by Allied. Respondent has not offered any copies of checks, money orders, receipts, wiring instructions, or any other proof of payment, or any other proof whatsoever that Allied resolved the HESAA loan herein. Respondent has not offered any discharge or pay-off document issued by HESAA showing its loan was resolved by Allied. Respondent's bare assertion, without more, that a document issued by a credit company, or a 1099 form showing Navient as the creditor, and not HESAA, is somehow proof that the HESAA loan was paid and/or discharged, must fail. Additional evidence beyond the opinion of respondent that one of the four loans to Navient is the loan HESAA is attempting to collect herein, was required to allow this tribunal to determine that the HESAA has incorrectly set the

amount due, and the amount to garnish, from respondent. Such evidence was not forthcoming.

Therefore, the agency, NJHESAA, should now be authorized to resume its garnishment at the rate of 15 percent of disposable wages sought.

DECISION

I ORDER that the total amount owed and defined of record, plus accrued interest and fees **be recovered by garnishment**. The amount to be deducted is **15 percent of respondent Melissa Perez's disposable wages**. 20 U.S.C.A. 1095(a)(1).

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(J) (2015).

June 20, 2018 ______________________
DATE

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EDWARD J. DELANOY, JR., ALAJ

Date Received at Agency ______________________

Date Mailed to Parties: ______________________

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LIST OF WITNESSES:

For petitioner:

Brian Lyszkiewicz

For respondent:

None

LIST OF EXHIBITS:

For petitioner:

P-1 Federal Stafford Loan Master Promissory Note

P-2 Offset calculations

For respondent:

R-1 Request for hearing and objection to garnishment, dated January 30, 2018

R-2 Respondent's Credit Report

R-3 List of respondent's accounts

R-4 Cancellation of Debt, Form 1099-C, 2016