

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 06191-18

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

Petitioner,

v.

CLAUDE DANIE ERISNOR,

Respondent.

Philip Levitan, Esq., or petitioner (Fein, Such, Khan & Sheppard, P.C.)

Clade D. Erisnor, pro se,

Record Closed: June 28, 2018

Decided: June 29, 2018

BEFORE **JOANN LASALA CANDIDO**, ALJ:

STATEMENT OF THE CASE

Respondent, Claude Erisnor (Erisnor or respondent), applied for and was granted a student loan for the purpose of paying tuition to Saint Peters College (St. Peters). Respondent 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 respondent 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. 1095a (2003), 34 C.F.R. 682.410(b)(9) (2003), N.J.S.A. 18A:72-1to21, N.J.A.C. 9A:10-1.4.

Respondent acknowledges acquiring the loan and failing to make payments as required. However, she asserts that the garnishment of fifteen percent of her wages would be a hardship.

PROCEDURAL HISTORY

On or about January 24, 2018, 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 April 30, 2018. Respondent requested a written statement. On May 7, 2018 the undersigned sent respondent a letter requesting any additional to documentation that I can rely on be submitted by May 21, 2018. On May 14, 2018, petitioner submitted correspondence indicating the amount of \$40,830.38 as due and owing. A telephone prehearing was conducted on May 17, 2018, at the request of respondent. A telephone status conference was rescheduled for May 23, 2018, which was adjourned due to the parties negotiating settlement. A notice of status conference was sent out on May 22, 2018. The notice again requested that any documentation that the undersigned could rely on be submitted on June 13, 2018. The May 23, 2018 status conference was rescheduled to June 13, 2018, wherein respondent advised that she had just received correspondence from petitioner on that date, and requested time to review it. Another status conference was scheduled for June 21, 2018, wherein respondent again requested to have an opportunity to review correspondence submitted from petitioner. The undersigned requested that the parties call in no later than June 28, 2018, to advise if the matter was resolved. I further advised that because it was requested for this matter to be decided on the papers, I would issue a written decision if I did not hear from the parties. On June 28, 2018, petitioner's counsel advised that respondent has not signed the proposed payment agreement.

FINDINGS OF FACT

The facts are not in dispute. Based upon the documentation submitted by respondent, the affidavit of Janice Seitz, Program Officer with the NJHESAA and the enclosures submitted therewith—that is, a copy of the loan application executed by petitioner, a copy of the voluntary monthly repayment arrangement, pay stubs, income tax returns and the computer information documenting the loan history, including interest accrued, I make the following **FINDINGS OF FACTS**:

1. On or about May 29, 2002, the defendant executed a Master Promissory note for guaranteed student loan(s) for the purpose of paying tuition to Saint Peters College. As a result thereof, Sallie Mae disbursed the sum of \$18,500. A true and correct copy of said application is attached hereto as Exhibit “A”
2. Pursuant to the terms of the aforesaid promissory/installment note(s), payments became due and owing thereunder on or about March 20, 2008.
3. Debtor defaulted on the aforesaid student loan(s) by failing to make the payments required thereunder.
4. As a result of the aforesaid default(s), the New Jersey Higher Education Student Assistant Authority was required to honor its guarantee. At the time NJHESSA acquired said loan(s), the amount of \$29,300.69 was due and owing. Interest continued to accrue pursuant to the promissory note. Collection costs have been assessed pursuant to 34 C.F.R. §682.410(b) (2).
5. On or about January 24, 2018, NJHESSA, acting pursuant to 20 U.S.C.A., §1095(a) et seq. and 34 C.F.R. §682.410(9), issued a notice of Administrative Wage Garnishment to the defendant.
6. The defendant timely filed this appeal of NJHESSA’s Notice.

7. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the defendant's employer to deduct fifteen percent (15%) of the defendant's disposable wages and remit the same to the New Jersey Higher Education Student Assistance Authority until such time as the defendant's student loans have been repaid.

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.S.A. 18A:72-1 to 21; 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. 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.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.S.A. 18A:72-16; 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. Respondent seeks to avoid a 15 % collection by pleading:

This letter is to notify HESAA that I am unable to pay the asking amount of about \$450.00. This is well over my affordability range at the moment. I have many expenses that I am expected and obligated to pay on a monthly basis including rent, my parent’s rent, a car note, 2 car insurances, other student loans, phone bills, credit cards, utilities and quite a few other things. Right now I can afford to pay about \$65-\$70 a month. .

..

In order to show financial hardship, respondent must prove by a preponderance of credible evidence the amount of the costs incurred for basic living expenses for her exceed the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d).

In this matter respondent’s gross monthly income is \$7,700. Respondent’s rent is \$1,550. Her utilities expense for PSE&G is \$175 per month. Her total cost for utilities and housing are \$1,725. The National Standards for one person for: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$583. Respondent lists her monthly motor vehicle car

payment is \$600; State Farm Car Insurance is listed at \$450; Cable Bill \$140; Capital One \$100; AT&T \$149; Parent's Mortgage \$800; Other Parent Expenses \$500; Work Transportation \$300; food \$300; LA Fitness \$40; Guerilla Fitness \$125; Verizon \$65; Classroom Expenses \$100 and Leisure Expense \$250.

Respondent's monthly expenses are \$6,394. Respondent's gross monthly income is \$7,700. It is noted that respondent lists, Cable, Verizon, AT &T, LA Fitness, Guerilla Fitness and Classroom expenses, a total of \$ 619 per month. Said expenses are not basic living expenses. Respondent did not provide any documentation stating that she has any of the alleged expenses other than itemized list of which lists her creditor's name and monthly payments. In the expense list submitted, respondent did not list any other student loans but did include a leisure expense at \$250 per month.

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. I further **CONCLUDE** that respondent failed to prove her claim of extreme financial hardship because even if all of her expenses were considered respondent's income would still be \$1,306 more than her expenses.

ORDER

Based upon all of the foregoing, 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)(J) (2017).

June 29, 2018

DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency

June 29, 2018_____

Date Mailed to Parties:

ljb

EXHIBITS

For Petitioner

P-1 Agency Documents

For Respondent

None