

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 06556-18

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

Petitioner,

v.

ANDREW PALMER,

Respondent.

Courtney Swanson-Davis, Esq., for Petitioner, NJHESAA (Schachter, Portnoy,
attorneys)

Andrew Palmer, Respondent, pro se

Record Closed: June 11, 2018

Decided: June 22, 2018

BEFORE **JOHN P. SCOLLO**, ALJ:

STATEMENT OF THE CASE

Petitioner, New Jersey Higher Education Student Assistance Authority (NJHESAA or Authority), proposes to garnish up to 15% of the wages of Respondent/Andrew Palmer (hereinafter Palmer), because he defaulted on higher education student loan repayments. The amount of the claim including principal, interest, and collection costs is \$12,877.75.

PROCEDURAL HISTORY

NJHESAA issued a Notice of Wage Garnishment on December 7, 2017. Palmer filed a Request for Hearing, dated January 7, 2018, alleging that a garnishment of fifteen percent of his disposable pay would result in extreme financial hardship; and that he had a physical condition (Asberger's Syndrome) that prevents him from performing the occupation for which he received training at school. At the hearing, he also stated that he was misled by an employer who had indicated that the employer would assist him in repaying his student loans.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on April 30, 2018, as a contested case. The matter was scheduled for disposition; a telephonic hearing took place on June 11, 2018; and the record was closed on that date.

The Tribunal received the submissions of the Petitioner, NJHESAA with the transmittal on May 10, 2018. Petitioner's submissions consist of fifty-one (51) pages, which were identified for the record at the hearing and will be referred to herein as P-1. The Tribunal did not receive any submissions from Palmer, aside from his hearing request.

ISSUE

The issue is whether the Authority has, from the facts of this case, demonstrated good cause to garnish petitioner's wages due to an asserted default in repayment of student loans.

APPLICABLE LAW

The Authority is a New Jersey State agency that administers and guarantees Federal and State funded student loans. N.J.S.A. 18A:72-1 to 21; N.J.A.C. 9A:10-1.4. It purchases loans on which student borrowers have defaulted and pursues various

remedies to collect the debts including wage garnishment up to 15% of the debtor's wages. 20 U.S.C. § 1095(a).

Debt collection is subject to Federal regulation. The Authority bears the burden of proving the existence and amount of the debt after which the burden shifts to the debtor to establish grounds to discharge the loan debt or to postpone wage garnishment. In order to impose an administrative garnishment, a guaranty agency must present records which show that the debt exists in the amount stated in the garnishment notice and that the debt is delinquent. 34 C.F.R. § 34.14(a). Once the guaranty agency meets its burden, the burden of proof shifts to the debtor. If the debtor disputes the existence or the amount of the debt, he must prove by a preponderance of the credible evidence that no debt exists, that the amount claimed is incorrect or that he is not delinquent with respect to the debt. 34 C.F.R. § 34.14(b). In addition, if the debtor claims hardship, he must show by credible evidence what that hardship is with respect to repayment of the note(s).

The Laws of New Jersey allow a judgment creditor to garnish the wages of a judgment debtor as follows: someone earning less than \$1,100 per week is subject to the greater of a garnishment of ten percent of earnings per week or \$60 per week. N.J.S.A. 2A: 17-50, -51 and -56. The debtor must be afforded an opportunity to contest the garnishment and be heard before an independent hearing officer, such as an Administrative Law Judge. Ibid.

FINDINGS OF FACT

Based on the testimony of the witnesses and the documents submitted, I **FIND** the following are the **FACTS**:

1. On or about April 24, 2007, Palmer executed a Master Promissory Note for a guaranteed student loan for the purpose of paying tuition to William Paterson University and/or Bergen Community College. As a result

- thereof, various banks, including Union Bank & Trust and Wells Fargo Bank, disbursed three loans totaling \$8,435.79.
2. Under the terms of the promissory/installment notes signed by Palmer, payments became due and owing on the guaranteed student loans.
 3. Palmer failed to make the payments as required and has defaulted.
 4. As a result of the default, NJHESAA was required to honor its guaranty and purchase the notes upon which Palmer is in default.
 5. At the time the NJHESAA acquired the notes, \$9,032.35 was due and owing.
 6. Interest continued to accrue under the notes and collection costs have been assessed against petitioner under authority of 34 C.F.R. § 682.410(b)(2). I **FIND** the collection costs to be reasonable.
 7. On or about December 7, 2017, the NJHESAA issued a Notice of Administrative Wage Garnishment to petitioner under authority of 20 U.S.C. § 1095(a) et seq. and 34 C.F.R. § 682.410(9).
 8. As of June 11, 2018, the sum of \$12,877.75, which includes principal, interest, and collection costs, is due and owing. Interest thereon continues to accrue. Palmer does not dispute that he owes this amount and that interest continues to accrue.
 9. In Palmer's Request for Hearing, he asserted that a garnishment of 15% of his disposable pay would result in an extreme financial hardship. At the hearing, Palmer testified that he has been employed part-time (20 to 30 hours per week) at a store called Crate and Barrel in Paramus, New Jersey since November 2017 up to the present time and currently earns \$12 per hour for a range of \$240 to \$360 per week. He testified that he resides in an apartment with his mother where he is responsible to pay \$300 of the \$1,300 per month rent. According to the above-cited garnishment law applicable in New Jersey, Palmer would be subject to a garnishment of his wages of \$60 per week. I **FIND** that \$60 is not an excessive garnishment amount.
 10. At the hearing, Palmer admitted that he did not respond to the Authority's request for information about his employment (i.e., when he started his job

with Crate & Barrel and his wage information). Palmer stated that he assumed that his employer had provided this information to the NJHESAA. I **FIND** Palmer's stated reason for failing to transmit the information to the Authority to be insufficient to excuse him from his obligation to provide the information.

11. At the hearing, Palmer asserted that he has suffered from Asperger Syndrome, which has been disabling and which affected his ability to find gainful employment. However, Palmer admitted that he never submitted proof in the form of medical documentation to the NJHESAA to substantiate his claimed disability and his claim for partial or complete loan forgiveness. I **FIND** that Palmer's assertion of a disability is totally lacking in verifiable proof and therefore is without merit.

LEGAL ANALYSIS AND CONCLUSIONS

In this case, I **CONCLUDE** that NJHESAA presented records, which show that the debt exists in the stated amount and that it is delinquent. I **CONCLUDE** that NJHESAA carried its burden of proof under 34 C.F.R. § 34.14(a). I **CONCLUDE** that Palmer admitted that he borrowed the sums asserted by HESAA, that the amount claimed by the NJHESAA is correct, and that Palmer defaulted in the repayment of the same. I also **CONCLUDE** that Palmer has not offered sufficient evidence to demonstrate that the \$60 per week garnishment would result in an extreme hardship given the fact of his continuing employment and his rent and living arrangements with his mother. I **CONCLUDE** that Palmer has not offered any verifiable proof of a disability. I **CONCLUDE** that Palmer has not given a sufficient reason for failing to supply information about his employment to the NJHESAA. I **CONCLUDE** that Palmer owes the sum of \$12,877.75 on which interest continues to accrue. I **CONCLUDE** that the Authority has demonstrated sufficient cause to justify the imposition of a wage garnishment against Palmer.

ORDER

Accordingly, it is **ORDERED** that an administrative wage garnishment be issued immediately, directing Palmer's employer to deduct sixty dollars (\$60) per week from Palmer's wages and to remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as the outstanding debt resulting from the student loan has been repaid, including accrued interest and costs.

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(J) (2017).

June 22, 2018 _____

DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner, NJHESAA:

Brian Lewinski

For Respondent/Appellant:

Andrew Palmer

List of Exhibits

For Petitioner:

P-1 Fifty-one pages of documents identified on the record

For Respondent:

None