

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 08721-14

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

Petitioner,

v.

FRANCIS GECHUKI,

Respondent.

Doug Fisher, Esq., appearing for petitioner

Francis Gechuki, pro se,

Record Closed: July 31, 2014

Decided: August 5, 2014

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Francis Gechuki (Gechuki or respondent), applied for and was granted a student loan for the purpose of paying tuition. He 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 Gechuki to deduct from his wages, an amount equal to fifteen percent of his 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 and failing to make payments as required. However, he asserts that the garnishment of fifteen percent of his wages would be a hardship.

On or about February 26, 2014, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed an appeal to the Notice of Administrative Wage Garnishment out of time. The matter was transmitted to the Office of Administrative Law on July 7, 2014. Respondent requested a hearing on written statement. A letter was sent to respondent on July 17, 2014, notifying him to provide me with any documentation of his claim by July 31, 2014. I closed the record on July 31, 2014.

FINDINGS OF FACT

Based upon 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, I make the following **FINDINGS OF FACT**:

1. On or about November 3, 2006, respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to Saint Peters University. JP Morgan Chase in reliance upon the master promissory note disbursed the sum of \$10,125.00.
2. Pursuant to the terms of the promissory note, monthly payments became due and owing.

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 \$12,391.12 remained due and owing.
7. Pursuant to the terms of the loan, interest has continued to accrue.
8. On or about February 26, 2014, 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 timely filed an appeal of NJHESAA's Notice of Administrative Wage Garnishment.
10. Respondent did not supply a written statement to support his claim that the wage garnishment would cause him financial hardship.

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. Gechuki seeks to avoid collection by pleading financial hardship.

In order to show financial hardship, Gechuki must prove by a preponderance of credible evidence the amount of the costs incurred for basic living expenses for his and his dependents and the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d). Gechuki has not provided any information or documentation regarding his income and expenses to show that a wage garnishment would cause him financial hardship.

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 has not provided any documentation regarding how repayment of the loan would be a financial hardship.

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).

August 5, 2014

DATE

KIMBERLY A. MOSS, ALJ

Date Mailed to Parties:

ljb

EXHIBITS

For Petitioner

P-1 Agency Documents

For Respondent

None