

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. HEA 10276-17

AGENCY DKT. NO. HESAA

**NEW JERSEY HIGHER EDUCATION  
STUDENT ASSISTANCE AUTHORITY  
(NJHESAA; THE AGENCY),**

Petitioner,

v.

**KATIE BRENNAN,**

Respondent.

---

**Russell P. Goldman, Esq.,** for petitioner

**Katie Brennan,** respondent, pro se, appearing through written statement

Record Closed: September 26, 2017

Decided: October 26, 2017

BEFORE **JOSEPH LAVERY**, ALJ t/a:

### **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, Katie Brennan**, contested this appeal by the agency on the grounds of financial hardship.

**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 July 11, 2017. Respondent Brennan challenges the proposed garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on July 26, 2017, to hear and decide the matter. Hearing convened on September 26, 2017, and on that date the record closed.

### **ANALYSIS OF THE RECORD**

#### **Background:**

The agency presented its factual case through its witness, **Aurea Thomas**, Sr. Investigator, NJHESAA, accompanied by exhibits, none of which were contested:

Ms. Thomas testified that she herself was familiar with all the books and records involved in the case. She offered the following factual background through her testimony in support of exhibits admitted in evidence:

The witness noted that Katie Slinchak, the borrower, is respondent Katie Brennan. It is under the former name that she accrued the debt. It was eventually consolidated through execution of a Federal Consolidation Loan and Promissory Note (Exh. C-1). Thereafter, respondent defaulted on the loan and the lender submitted a claim under the Federal Family Education Loan Program for reimbursement by the government, which is the statutory guarantor under the Act (Exh. P-1). The claim was honored, and a check issued to the lender on June 14, 2012, in the amount of \$21,295.25, comprised of principal and interest (Exh. P-5).

With the agency now owning the loan, it set a repayment schedule. Respondent defaulted again, and petitioner imposed garnishment (Exh. P-2). Respondent requested a hearing, and this appeal to maintain the garnishment followed (Exh. P-4). Here the matter stands, with the garnishment paused to await a decision.

**Arguments of the parties:**

**Petitioner, NJHESAA**, through Ms. Thomas, stated that it was its wish to work with respondent to reduce payments, notwithstanding the garnishment. The agency's effort to do so was not successful. It had sent her a financial statement form to elicit the necessary information, but it was not returned. Usually, Ms. Thomas observed, after calculation by its accounting office using a ten-year repayment plan, the agency would move to application of National Guidelines in answer to a later complaint of inability to pay the amount per month calculated. Here, this was not possible. Respondent did not submit the necessary supporting

data. The agency contends that its information shows that the amount garnished is what respondent can afford. Consequently, the agency asks for an order resuming the garnishment.

**Respondent, Katie Brennan**, asks that her position: that she is unable to pay, be gleaned from the written record. However, beyond the assertion of financial hardship, she has not submitted further documentation or argument at hearing.

**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.

**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 “extreme financial hardship,” 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 an unsustainable financial hardship.

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 Katie Brennan'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).

October 26, 2017  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
**JOSEPH LAVERY, ALJ t/a**

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

mph

**LIST OF WITNESSES:**

**For petitioner:**

Aurea Thomas

**For respondent:**

None

**LIST OF EXHIBITS:**

**Court Exhibits:**

C-1 FFELP Federal Consolidation Loan Application and Promissory  
Note: Katie Slinchak, dated 5-31-2007

**For petitioner NJHESAA:**

- P-1 FFELP Claim Form, dated April 25, 2012
- P-2 NJHESAA Pursuit Activity file
- P-3 Screen history of payment
- P-4 Request For Hearing On The Written Record, dated 5-22-17 (with  
attachments): Katie Brennan
- P-5 Default screen: Katie Brennan
- P-6 United States Department of Education Certification of Identity &  
Authorization to Disclose Personal Information: Katie Brennan,  
dated 5-8-2017

**For respondent:**

None