

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 10566-17

AGENCY DKT. NO. N/A

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

Petitioner,

v.

BELINDA ALLEN,

Respondent.

Howard Schachter, Esq. for petitioner (Law Offices of Schachter Portnoy, LLC,
attorney)

Belinda Allen respondent, appearing on the papers pursuant to N.J.A.C. 1:1-
14.8

Record Closed: September 7, 2017

Decided: September 11, 2017

BEFORE **ELISSA MIZZONE TESTA**, ALJ:

STATEMENT OF THE CASE

Belinda Allen, (“Respondent”) applied for and was granted a student loan in 2005 for payment of tuition to an institution of higher education. She failed to make all payments due and defaulted on the loan. The New Jersey Higher Education Student Assistant Authority (NJHESAA) guaranteed and honored respondent’s loans. It now demands an Order garnishing respondent’s wages to recover the amount it paid on her behalf, plus interest and fees. See 20 U.S.C. §1095a (2003), 34 C.F.R. §682.410(b)(9) (2003), N.J.S.A. 18A:72-1 to -21, N.J.A.C. 9A:10-1.4.

PROCEDURAL HISTORY

On or about February 22, 2017, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed a timely appeal to the Notice of Administrative Wage Garnishment. This matter was transmitted to the Office of Administrative Law (OAL) on July 20, 2017. The Respondent requested a hearing based on her written statement. A telephone conference was scheduled for September 7, 2017, at which time the Respondent failed to participate. Attempts were made to contact Respondent by phone on same date without success. The matter proceeded on the papers.

FINDINGS OF FACTS

The facts are not in dispute. Based upon the evidence, including the affidavit of Janice Seitz, Program Officer with the NJHESAA and the enclosures submitted therewith, I **FIND**:

On or about March 31, 2005, respondent executed a Promissory/Installment Note for a guaranteed student loan for the purposes of paying tuition. Citi Bank, a financial institution, disbursed the sum of \$13,542.00. (P-1).

Pursuant to the terms of the Promissory/Installment Note, payment became due and owing. However, respondent failed to make the aforesaid payment and thus defaulted on the loan. The Petitioner was forced to acquire said loan for the amount of \$18,158.92. (loan principal plus accrued interest). (P-1).

On or about February 22, 2017, NJHESAA, 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 Respondent. (P-1). Interest has continued to accrue pursuant to the Promissory Note.

Respondent timely filed this appeal of NJHESAA's Notice, objecting to the garnishment of 15% of her disposable pay claiming it would cause an extreme financial hardship. No documentation to support Respondent's claim was attached to the request. (P-1). To date, no documentation has been produced by the Respondent.

Petitioner has represented that throughout the entire collection process repeated attempts were made to contact the Respondent to obtain her financial statement/records and discuss possible resolution of the matter. No documentation has been produced by the Respondent nor has Respondent availed herself for settlement purposes.

I **FIND** that the Authority has shown by a preponderance of evidence that the debt of respondent exists. Further, I **FIND** that the debt is as calculated by Petitioner and that the debt is delinquent.

LEGAL DISCUSSION AND CONCLUSION

Based on the foregoing facts and the applicable law, I **CONCLUDE** that Respondent is subject to a garnishment of her wages. 20 U.S.C.A. §1095a(a)(5) provides that 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 repayments 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. A guaranty agency is a nonprofit organization or state agency, such as the Authority, 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 Authority to purchase certain defaulted student loans and permit the Authority 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 the Authority of a defaulted loan, the Authority first determines the legitimacy of the claim and ensures that all Federal and state requirements for default aversion have been followed. If the

Authority determines that "due diligence" has been met and purchases the loan from the lender, the Authority then seeks to collect on the debt. N.J.A.C. 9A:10-1.4(b)(7) and (8); N.J.A.C. 9A:10-1.14(b).

Initially, the Authority bears the burden of proving the existence and amount of the debt. 34 C.F.R. §34.14(a). Once that burden is satisfied, the burden shifts to the borrower to prove one of the valid reasons to discharge the loan or to postpone issuance of a wage garnishment. 34 C.F.R. §34.14 (c) and (d). Here the Authority/NJHESAA produced adequate documentation establishing the existence of the debt and the amount currently delinquent. Respondent seeks to avoid collection by pleading "financial hardship".

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 herself and her dependents and the income available from any source to meet those expenses. 34 C.F.R. §34.24(d). Next, the trier of fact compares the amounts that the borrower incurred for daily living expenses with national standards published by the Internal Revenue Service for families of the same size and similar income.¹ 34 C.F.R. §34.24(e)(2). If the amount that the borrower spends for a type of daily living expense does not exceed the amount spent for that expense according to the national standards, then the expense will be accepted as reasonable. Otherwise, the borrower must prove that the amount claimed is reasonable and necessary. 34 C.F.R. §34.24(e)(3) and (4). Despite her claim of financial hardship in her appeal letter, Respondent has provided no evidence, whatsoever, to support her claim by a preponderance of credible evidence. Moreover, she has provided no basis for her failure to submit any evidence to support her claim. Therefore, I **CONCLUDE** that Respondent has not met her burden of proving that garnishment of her disposable pay would result in financial hardship.

¹ 26 U.S.C.A. 7122(d)(2) directs the Internal Revenue Service to "develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses."

ORDER

Based on the foregoing, it is hereby **ORDERED** that the amount sought by the agency shall be recovered by garnishment. However, the amount deducted for any pay period should not exceed 15% percent of the Respondent's disposable income.

This decision is final pursuant to 34 C.F.R. §682.410(b)(9)(i)(N) (2010).

September 11, 2017

DATE

ELISSA MIZZONE TESTA, ALJ

Date Received at Agency

September 11, 2017

Date Mailed to Parties:

sej

APPENDIX

LIST OF EXHIBITS

For Petitioner:

P-1 Hearing Packet

For Respondent:

None