

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

**FINAL DECISION**

OAL DKT. NO. HEA 11051-17

AGENCY DKT. NO. HESAA

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

Petitioner,

v.

**GABRIELLE WRIGHT,**

Respondent.

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**Kortney Swanson-Davis, Esq.,** for petitioner (Schachter Portnoy, LLC,  
attorneys)

**No appearance by Gabrielle Wright,** respondent, pro se

Record Closed: October 26, 2017

Decided: November 29, 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.

**Respondent, Gabrielle Wright**, contested this appeal by the agency.

**Today's decision grants the agency's petition to impose 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 28, 2017. Respondent Wright challenges the proposed garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on August 8, 2017, to hear and decide the matter. Hearing convened on September 6, 2017, but the record remained open for additional submissions from petitioner to confirm the signature of respondent. They were stamped as received in the OAL on October 30, 2017. The submissions were not contested. 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 was contested:

Ms. Thomas adopted as her own the sworn testimony of Janice Seitz, Program Officer, NJHESAA, and stated that she was familiar with all the books and records involved in the case. So informed, she described the facts of the case:

On October 23, 2006, respondent executed a note to obtain a loan from Sallie Mae, the lender. The amount borrowed was \$10,500, for use in payment of university tuition. (Exhibits P-1, P-2.) In time, respondent defaulted on the loan. (Exhibit P-3.) As statutory guarantor, petitioner NJHESAA acquired the loan from the lender after payment of the amounts owed at that time: \$14,506.38. (Exhibits P-4, P-10.)

NJHESAA then set a schedule for payments. Notwithstanding, respondent did not submit payments. (Exhibit P-5.) NJHESAA therefore gave respondent written notice of its intent to garnish; attaching a request for hearing form in the event respondent wished to appeal the agency's decision. (Exhibits P-6, P-7.) Respondent chose to do so. She asked for a telephonic hearing to present her argument that garnishment would result in extreme financial hardship. (Exhibit P-8.)

In response, the agency sent respondent a financial statement form (Exhibit P-9) seeking the necessary information to determine administratively whether respondent's position was valid. Respondent did not return the form.

Without sufficient information to assess hardship, the agency then decided to move ahead for garnishment, and here the matter stands.

Apart from her request for hearing form, respondent, **Gabrielle Wright**, did not submit, nor did she make herself available for, a defense.

**Findings of Fact:**

I **FIND** that no specific material facts proffered by either side are directly contested. Only their legal import must be established herein.

**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).

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 to be garnished is an unsustainable financial hardship.

Therefore, the agency, NJHESAA, should now be authorized to impose garnishment at the rate of 15 percent of disposable wages sought.

**DECISION**

**I ORDER, therefore,** 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 Gabrielle Wright'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)(N) (2010).

November 29, 2017  
DATE

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**JOSEPH LAVERY, ALJ t/a**

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

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**LIST OF WITNESSES:**

**For petitioner:**

Aurea Thomas

**For respondent:**

None

**LIST OF EXHIBITS:**

**For petitioner NJHESAA:**

- P-1 Affidavit of Janice Seitz, dated July 18, 2017, with attachments
- P-2 Federal Stafford Loan and Promissory Note, executed October 23, 2006
- P-3 FFELP Claim Form from lender, submitted November 30, 2015
- P-4 Default Master Screen, as of July 19, 2017
- P-5 Payment history: Gabrielle L. Wright
- P-6 Correspondence history: Gabrielle Wright
- P-7 NJHESAA forms: notice of intent to garnish and request for hearing
- P-8 Completed request for hearing form: Gabrielle Wright.
- P-9 Sample Financial Statement form
- P-10 Default Master Screen, as of September 6, 2017

**For respondent:**

None