

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 11062-17

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

Petitioner,

v.

YVONNE LITTLES,

Respondent.

Kortney Davis, Esq., for petitioner (Law Offices of Schachter Portnoy, attorneys)

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

Record Closed: September 19, 2017

Decided: September 29, 2017

BEFORE **SUSANA E. GUERRERO**, ALJ:

STATEMENT OF THE CASE

Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA or petitioner) seeks an order garnishing the wages of respondent, Yvonne Littles (respondent), and to remit this amount to petitioner until such time as respondent's student loan has been repaid.

PROCEDURAL HISTORY

Respondent requested a telephone hearing, and the matter was transmitted to the Office of Administrative Law (OAL) on July 28, 2017. A prehearing telephone conference was held on August 31, 2017, at which time the parties were instructed to exchange all discovery by September 12, 2017, and the hearing was scheduled for September 19, 2017 at 3:30pm.

On September 19, 2017, respondent failed to appear for the hearing by telephone. Three separate attempts were made to contact respondent by telephone between 3:30 and 4:00pm, and a voicemail message was left for respondent but was never returned. The matter proceeded on the papers.

STATEMENT OF THE ISSUE

The issue is whether petitioner has established, by a preponderance of the credible evidence, that it is entitled to an administrative wage garnishment.

FINDINGS OF FACTS

Based upon the evidence provided, including the affidavit of Janice Seitz, Program Officer with NJHESAA, and the enclosures submitted therewith—including a copy of the Federal Stafford Loan Master Promissory Note executed by respondent; NJHESAA's Claim Form; computer information documenting the loan history, including interest accrued; and respondent's Request for Hearing—I make the following

FINDINGS OF FACT:

1. On or about December 1, 2005, respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to New Jersey City University. As a result, Navient disbursed the sum of \$23,500.

2. Pursuant to the terms of the promissory note, payment became due and owing on or about December 24, 2015.
3. Respondent, however, failed to make the aforesaid payment and thus defaulted on the loan.
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 respondent's default, petitioner was required to honor its guarantee, and acquired said loan for the amount of \$31,770.66.
6. Interest continued to accrue pursuant to the promissory note, and collection costs have also been assessed.
7. On or about April 26, 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.
8. 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.
9. As of approximately July 19, 2017, \$40,092.26 was due and owing on the loan. This amount includes the principal amount of the claim, interest accrued and \$7,417.23 in collection costs.
10. To date, respondent has not produced any documentation to support her objection to NJHESAA's proposed wage garnishment.

I **FIND** that petitioner 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

NJHESAA is a state-designated agency responsible for administration of the loan guarantee program for federal and state funded student loans. N.J.S.A. 18A:71A-1 to -34; 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. §1095(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). Pursuant to New Jersey statute and regulation, NJHESAA is required to purchase certain defaulted student loans and 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, the Authority first determines the legitimacy of the claim for purchase by the Authority 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, it 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. Here, respondent has failed to meet this burden. While petitioner objected to a garnishment of 15% of her disposable pay because it would result in an extreme financial hardship, she failed to make an appearance for the hearing and offered no evidence whatsoever to support her objection.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has proven the existence and the amount of the claimed debt, and that repayment thereof is in default. Respondent failed to support her claim of extreme financial hardship which could offset the obligation she undertook voluntarily.

ORDER

Based upon all of the foregoing, I **CONCLUDE** that petitioner has satisfied its burden. 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)(J) (2015).

September 29, 2017
DATE

SUSANA E. GUERRERO, ALJ

Date Received at Agency

Date Mailed to Parties:

jb

APPENDIX

LIST OF EXHIBITS

For Petitioner:

P-1 Hearing Packet

For Respondent:

None