

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 12692-15

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

Petitioner,

v.

CHARLES DE LEON,

Respondent.

Alvin Darby, Esq., for petitioner (Fein, Such, Khan & Sheppard, P.C., attorneys)
for petitioner

Charles DeLeon, respondent appearing pro se

Record Closed: November 19, 2015

Decided: November 20, 2015

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, New Jersey Higher Education Student Assistance Authority (HESAA or Authority), proposes to garnish up to 15% of the wages of respondent, Charles DeLeon, because he defaulted on higher education student loan repayments. HESAA issued a Notice of Wage Garnishment on March 25, 2015. Petitioner filed a written request, dated April 20, 2015, for a hearing by telephone to challenge the garnishment. The matter was transmitted to the Office of Administrative Law (OAL), where it was filed on August 17, 2015, and a hearing was scheduled for September 17, 2015. Petitioner and respondent both appeared in person in the courtroom at the Office of

Administrative Law, Newark, New Jersey. Phillip Levitan, Esq. appeared on behalf of petitioner. The parties, at that time, agreed to settle the matter with respondent to execute paperwork for a time payment plan. Petitioner failed to submit the required paperwork and a second hearing was scheduled for October 21, 2015. Mr. Levitan again appeared on behalf of petitioner at the OAL in Newark, New Jersey. Respondent appeared telephonically. Again the parties agreed to settle with Respondent entering into a time payment arrangement. This was place on the record. Again, petitioner did not submit the required paperwork and a third hearing was scheduled for November 19, 2015, to be heard telephonically.

The hearing was held telephonically on November 19, 2015, at which time the record was closed.

ISSUE

The issue is whether the Authority has a basis to garnish petitioner's wages due to an asserted default in repayment of student loans.

LEGAL BACKGROUND

The Authority is a New Jersey State agency that administers and guarantees Federal and State funded student loans. N.J.S.A. 18A:72-1 - 21; N.J.A.C. 9A:10-1.4. It purchases loans on which student borrowers have defaulted and pursues various remedies to collect the debts including wage garnishment up to 15% of the debtor's wages. 20 U.S.C. §1095(a). The debtor must be afforded an opportunity to contest the garnishment and be heard before an independent hearing officer, such as an Administrative Law Judge. Ibid.

Debt collection is subject to Federal regulation. The Authority bears the burden of proving the existence and amount of the debt after which the burden shifts to the debtor to establish grounds to discharge the loan debt or to postpone wage garnishment.

FINDINGS OF FACT

Based on the affidavit and testimony of Janice Seitz, HESAA Program Officer, and with the testimony of respondent who does not dispute that he borrowed the funds and defaulted on the loan, I **FIND** the following are the **FACTS**:

1. On or about September 21, 2014, respondent executed a Master Promissory Note for a guaranteed student loan for the purpose of paying tuition to Allied Medical & Technical Institute. As a result thereof, Suntrust Bank paid the sum of \$4,785.00 to Allied Medical & Technical Institute on behalf of respondent.
2. Under the terms of the promissory/installment notes signed by petitioner, payments became due and owing on the guaranteed student loans.
3. Petitioner failed to make the payments as required.
4. As a result of the default, the HESAA was required to honor its guarantee and purchase the notes upon which petitioner is in default.
5. At the time the HESAA purchased the notes, \$5,510.43 was due and owing.
6. Interest continued to accrue under the notes and collection costs have been assessed against petitioner under authority of 34 CFR §682.410(b)(2).
6. On or about March 25, 2015, the HESAA issued a Notice of Administrative Wage Garnishment to petitioner under authority of 20 U.S.C.A. §1095(a), et seq., and 34 CFR § 682.410(9).

Ms. Seitz confirmed that through the interest accruing on the amount outstanding, petitioner owes as of November 19, 2015, the sum of \$6,896.07. Interest continues to accrue.

ANALYSIS

Pursuant to federal law a guaranty agency, such as HESAA, may garnish the disposable pay of an individual to collect the amount owed by that individual for the repayment of a student loan for higher education expenses, if he or she is not currently making the required repayment. 20 U.S.C.A. 1095a (a).

The amount deducted may not exceed fifteen percent of disposable pay. 20 U.S.C.A. 1095a (a)1.

In order to impose an administrative garnishment, a guaranty agency must present records which show that the debt exists in the amount stated in the garnishment notice and that the debt is delinquent. 34 CFR 34.14(a). Once HESAA meets that burden, and if the debtor disputes the existence or the amount of the debt, he must prove by a preponderance of the credible evidence that no debt exists, that the amount claimed is incorrect or that he is not delinquent with respect to the debt. 34 CFR 34.14(b). In addition, if the debtor claims hardship he must show by credible evidence what that hardship is with respect to repayment of the note.

In this case, HESAA presented records, which show that the debt exists in the stated amount and that it is delinquent. HESAA carried its burden of proof under 34 CFR 34.14(a). I **FIND** respondent does not dispute that he borrowed the sum asserted by HESAA, or that he defaulted in the repayment of the same, or the amount due.

CONCLUSION

Accordingly, it is **ORDERED** that an administrative wage garnishment be issued immediately, directing respondent's employer to deduct from his wages an amount equal to 15% of his disposable pay and remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as the outstanding debt resulting from the consolidated student loan has been repaid, including accrued interest and costs.

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

November 20, 2015

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties:
Db _____

APPENDIX

List of Witnesses

For Petitioner:

Charles De Leon

For Respondent:

Janice Seitz, Program Officer, Servicing/Collections Unit for NJHESAA

List of Exhibits

For Petitioner:

P-1 Affidavit of Janice Seitz with Master Promissory Note attached

For Respondent:

None