

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 12749-17

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

Petitioner,

v.

KELLY GALLAGHER,

Respondent.

Howard Schachter, Esq., for petitioner (Schachter Portnoy, attorneys)

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

Record Closed: October 2, 2017

Decided: October 19, 2017

STATEMENT OF THE CASE

Petitioner, the New Jersey Higher Education Student Assistance Authority (petitioner or NJHESAA), seeks an order directing the employer of respondent, Kelly Gallagher (respondent or Gallagher), to deduct from her wages an amount equal to ten percent of her disposable wages and to remit this amount to NJHESAA until such time as respondent's student loan has been repaid. On or around June 19, 2017, respondent requested a hearing based on her written statement and the records in her loan file.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law on August 30, 2017. By letter dated September 6, 2017, the undersigned wrote to the parties and scheduled a hearing on the papers for October 2, 2017. The parties were also instructed to provide, by September 22, 2017, any supporting documents that may not have been included with the file transmitted by the petitioner. On September 25, 2017, the respondent transmitted a letter to the undersigned in which she indicates that a wage garnishment will create extreme financial hardship and cause other accounts to go delinquent. (R-1.) Approximately four days later, the respondent provided a NJHESAA financial statement in support of her application. (R-2.) No additional documents were submitted by either party.

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 FACT

Based on an affidavit of Janice Seitz, submitted on behalf of the petitioner, together with the supporting documentation, as well as the NJHESAA financial statement submitted on behalf of respondent, I make the following **FINDINGS OF FACT**:

1. On or about February 20, 2007, the respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to Felician University. As a result thereof, Nelnet-Wells Fargo disbursed the sum of \$17,100.
2. Respondent defaulted on the aforesaid student loan by failing to make payments required thereunder.

3. Petitioner is the State agency in New Jersey designated as a guarantor agency for federal and state funded student loans.
4. As a result of the default of respondent, petitioner was required to honor its guarantee. At the time NJHESAA acquired said loan in January 2016, the amount of \$26,752.10 was due and owing.
5. Pursuant to the terms of the loan, interest has continued to accrue. Collection costs have also been assessed.
6. On or about May 31, 2017, petitioner, acting pursuant to 20 U.S.C.A. ¶ 1095(a) et seq. and 34 C.F.R. 682.410(b)(9), issued a Notice of Administrative Wage Garnishment to the respondent.
7. NJHESAA is seeking an order directing respondent's employer to deduct from her wages an amount equal to ten-percent (10%) of her disposable wages and remit same to NJHESAA until said loan is satisfied.
8. Respondent filed a timely appeal.
9. Gallagher requested a hearing based on a written statement and records in her loan file. No such written statement was found in the loan file provided by petitioner. However, in a letter received by the undersigned on September 25, 2017 from Gallagher, she objected to the wage garnishment because, she asserts, it would create an extreme financial hardship and cause her other accounts to go delinquent.
10. On September 29, 2017, Gallagher provided a financial statement that she completed by hand, outlining her income and expenses. (R-2.) According to the financial statement, Gallagher has been employed as a teacher for approximately two years and ten months, earns a grossly monthly salary of

\$6,246.50, and her “take home pay” is \$3,714.62. She pays \$950 per month in rent. Her monthly expenses are listed as follows:

•	CIGNA	\$380.54
•	Ally	\$694.00
•	Verizon	\$230.00
•	Progressive	\$200.00
•	Navient	\$200.00
•	PSE&G	\$60.00
•	PSE student loan	\$50.00
•	Misc. credit cards	\$800.00
•	Tolls	\$250.00
•	Gas	\$200.00+
•	Comenity bank	\$215.00
•	Misc. Loans	\$300.00
•	Comcast	\$155.00
•	Groceries	\$200.00

Total monthly expenses total \$3,934.54.¹

11. Aside from the handwritten information contained on the financial statement, no documentary evidence (such as paystubs, bills or receipts) was provided by respondent to support her objection to the proposed wage garnishment. Moreover, no additional information was provided to explain what several questionable expenses listed represent—for example, “Ally,” “Misc. credit cards,” “Comenity bank,” and “Misc. loans.” It cannot, therefore, be determined whether these expenses represent basic living expenses, or whether they are necessary and reasonable.

¹ Respondent did not explain how she pays her total monthly expenses of \$3,934.54 when her net income is \$3,714.62.

12. As of approximately August 15, 2017, \$36,377.81 was due and owing on the loan. This amount includes the principal amount of the claim, interest accrued and collection costs.

LEGAL ANALYSIS AND CONCLUSIONS

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). 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 the Authority 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 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) & (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 Gallagher objected to the garnishment of her wages on the basis that it would create an extreme financial hardship, she has failed to offer sufficient evidence to support this assertion.

In order to show financial hardship, Gallagher must prove by a preponderance of credible evidence the amount of the costs incurred from basic living expenses for herself to exceed 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 from daily living expenses with national and local standards published by the Internal Revenue Service for families of the same size and similar income. 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 standard, 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).

In this matter, respondent's gross monthly income is listed as \$6,246.50, and her net monthly income is \$3,714.62. Despite her claim of financial hardship in her letter, Gallagher has failed to provide sufficient evidence to support such a claim by a preponderance of credible evidence. It cannot be determined what several of the expenses listed on the financial statement are, and therefore, it cannot be determined

whether these expenses represent daily living expenses, or other necessary and reasonable expenses. Although the undersigned considered the documents submitted by Gallagher, her income and expense statement was a mere listing of figures that were unsupported by proofs. Therefore, Gallagher has not met her burden of proving that garnishment of her disposable pay would result in financial hardship.

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.

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 of 10% of respondent's disposable wages.

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(J) (2015).

October 19, 2017
DATE

SUSANA E. GUERRERO, ALJ

Date Received at Agency

Date Mailed to Parties:

jb

APPENDIX

EXHIBITS

For Petitioner:

- P-1 Affidavit of Janice Seitz and Agency Documents—including a copy of the Federal Stafford Loan Master Promissory Note executed by respondent; HESAA Claim Forms; computer information documenting the loan history, including interest accrued; and respondent's Request for Hearing

For Respondent:

- R-1 Letter from respondent received on September 25, 2017
R-2 NJHESAA financial statement completed by respondent