

DECISION

OAL DKT. NO. HEA 7863-15

AGENCY DKT. NO. HESAA

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

Petitioner,

v.

SHAWN SAVAGE,

Respondent.

Kortney Swanson Davis Esq., for petitioner (Schachter & Portnoy,
attorneys)

Shawn Savage, respondent, pro se, appearing on the papers

Record Closed: July 23, 2015

Decided: September 1, 2015

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 to impose an administrative wage garnishment on income of respondent.

Respondent, Shawn Savage, opposes this action on appeal.

Today's decision affirms the right to garnish the wages of respondent Shawn Savage in amount not to exceed 15 percent of disposable wages.

PROCEDURAL HISTORY

This matter was filed on May 29, 2015, in the Office of Administrative Law (OAL) by the agency head for hearing. The Acting Director and Chief Administrative Law Judge on June 5, 2015, ordered that this case be heard before the undersigned, temporarily appointed on recall. Hearing convened on July 23 2015, and on that date the record closed.

ANALYSIS OF THE RECORD

Background:

The material facts in this matter are not greatly in dispute:

Respondent Savage executed a promissory note to obtain monies for school tuition at Centenary College. The amount borrowed was \$22, 125 and the lender was Sallie Mae Education Trust (Exhs. P-1 and P-2). In time, respondent defaulted through failure to submit monthly payments, causing the lender to submit a claim for reimbursement to the guarantor under the provisions of the Federal Family Education Loan Program (Exh. P-3), New Jersey Higher Education Assistance Authority (NJHESAA). The monies reimbursed to the lender, comprised of principal and interest, amounted to \$26,454.15 (Exh. P-4).

After assuming the debt, NJHESAA sought repayment. The credible testimony of **Aurea Thomas**, Senior Investigator of the agency, is that respondent did not submit payments due and that no further amounts followed from him starting on May 15, 2014 (Exh. P-5). On February 25, 2015, NJHESAA sent respondent a notice of intent to garnish (Exhs. P-6, P-7). He responded with a request for hearing on his written statement, which argued that garnishment in any amount would cause extreme financial hardship. Subsequently, the agency forwarded to him a financial statement form (Exh. P-9), which he completed (Exh. P-10).

On the facts of this record, respondent asks that no garnishment be imposed. In contrast, because of three agency lowerings of monthly payment amounts which were left unpaid, according to the believable testimony of Ms. Thomas, the agency now moves for a full 15 percent garnishment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact:

I FIND that:

1. There are no disputes of material fact concerning the existence of the debt, the amounts of principal and interest calculated by the agency as owing, or the state of delinquency in the loan.
2. Respondent's financial condition is as memorialized in the federal and municipal forms submitted to the agency (Exh. P-10).
3. Petitioner NJHESAA has on three prior occasions lowered respondent's monthly payments, without submission of those amounts by respondent.

Conclusions of Law

Burden of Proof:

The burden of persuasion 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:

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. The testimony of its witness was credible and supported by the unchallenged proffer of Exhibits P-1 through P-10, now in evidence.

The ameliorating circumstances claimed by respondent in his Request for Hearing Form create an affirmative defense. It is respondent who therefore has the burden of persuasion. He must show that both facts and law compel a retreat by the agency from its request to initiate garnishment. This respondent has *not* done. It is plain that the terms of the promissory note and the enabling legislation (the Act) creating NJHESAA compel the agency's exercise of its authority to recover expended public funds.

Consequently, it is a fair construction of the Act and implementing rules that the agency is now entitled to be made whole. To achieve such "wholeness," repayment should be compelled through garnishment. The garnishment should go forward by adding the amounts of respondent's unpaid principal and capitalized interest to the mathematical mix of factors the agency normally employs when computing remaining monthly schedules of payment. These added amounts would be spread over the life of the loan. The goal must be to assure complete repayment of the entire loan within that number of years for which repayment was originally contracted.

Such an apportionment of payments here may or may not reach the monthly cap of 15 percent of disposable wages which now is suggested by the agency as most appropriate. Notwithstanding, the decisive consideration must be otherwise. There is an absence of any ineluctable compulsion in law or rules which demands immediate, automatic move to garnish at the monthly maximum of 15 percent of disposable income simply by reason of past non-payment. Further consistent with this view is the lack of legislative intent to be found in the Act or in the cited rules to automatically garnish the maximum by way of *penalty* for a borrower's non-compliance (the agency likewise denies that intent). Consequently, NJHESAA should reach the monthly garnishment figure it seeks by adherence to the normal course. It must rely on whatever uniform assessment calculation procedure it customarily follows when administering the Act. As noted above, this process may, or may not reach the 15 percent legal maximum.

ORDER

I ORDER, therefore, that the amount defined of record as owed by respondent and sought by petitioner NJHESAA, plus accrued interest and fees, be recovered by garnishment consistent with the above reasoning. However, the monies deducted for any pay period shall be at no more than 15 percent of disposable wages. 20 U.S.C.A. 1095(a)(1).

This decision is final pursuant to N.J.A.C. 17:25-1.7 and 34 C.F.R. §682.410(b)(9)(i)(N).

September 1, 2015
DATE

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JOSEPH LAVERY, ALJ t/a

LIST OF WITNESSES:

For petitioner:

Aurea Thomas

For respondent:

None

LIST OF EXHIBITS:

For Petitioner NJHESAA:

- P-1 Affidavit of Janice Seitz, dated May 5, 2015 (with attachment)
- P-2 Federal Stafford Loan Promissory Note: Shawn Savage, dated May 6, 2003
- P-3 FFELP Claim Form: Sallie Mae, dated December 28, 2011
- P-4 Default Screen: Shawn P. Savage
- P-5 Payment History: Shawn P. Savage
- P-6 Student Correspondence Screen: Shawn P. Savage
- P-8 Notice of Intent to Garnish form
- P-9 Request For Hearing: Shawn Savage dated March 9, 2015
- P-10 Financial Statement (with attachments) Shawn P. Savage, dated March 16, 2015

For Respondent:

None