

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

**FINAL DECISION**

OAL DKT. NO. HEA 01117-15

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

Petitioner,

v.

**RASHEE COE,**

Respondent.

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**Doug Fisher**, Esq., or petitioner (Solomon and Solomon)

**Rashee Coe**, pro se,

Record Closed: February 19, 2015

Decided: February 19, 2015

BEFORE **KIMBERLY A. MOSS**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Respondent, Rashee Coe (Coe or respondent), applied for and was granted a student loan for the purpose paying tuition to Lincoln Technical Institute (Lincoln). He failed to make the proper installment payments when they became due and defaulted. Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA) was the guarantor of the loan and subsequently purchased it from the lender. NJHESAA seeks an order directing the employer of Coe to deduct from his wages, an amount equal to fifteen percent of his disposable wages and to remit this amount to petitioner until such time as respondent's student loan has been repaid. See 20 U.S.C.

1095a (2003), 34 C.F.R. 682.410(b)(9) (2003), N.J.S.A. 18A:72-1to21, N.J.A.C. 9A:10-1.4.

Respondent acknowledges acquiring the loan and failing to make payments as required. However he asserts the following:

1. The garnishment of fifteen percent of her wages would be a hardship.
2. He did not have a high school diploma or GED when he enrolled in the school.
3. The school did not properly test his ability to benefit from the program .
4. At the time he obtained the loan he had a criminal conviction that preventing him from meeting the state requirements for performing the occupation that for which he was receiving training.

On or about April 30, 2014, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed a timely appeal to the Notice of Administrative Wage Garnishment. The matter was transmitted to the Office of Administrative Law on January 6, 2015. Respondent requested a hearing on written statement. I sent respondent a letter on January 29, 2015 stating that any additional documentation must be submitted by February 18, 2015. Respondent submitted additional documentation on February 18, 2015. Petitioner submitted additional documentation on February 19, 2015. I closed the record on February 19, 2015.

### **FINDINGS OF FACT**

The facts are not in dispute. Based upon the documentation submitted by Coe, the affidavit of Janice Seitz, Program Officer with the NJHESAA and the enclosures submitted therewith—that is, a copy of the loan application executed by petitioner, a copy of the voluntary monthly repayment arrangement, pay stubs, income tax returns and the computer information documenting the loan history, including interest accrued, I make the following **FINDINGS OF FACT:**

1. On or about April 26, 2004, respondent executed a master promissory note for a guaranteed student loan for the purpose of paying tuition to Lincoln. JP Morgan Chase Bank in reliance upon the master promissory note disbursed the sum of \$10,788.
2. Pursuant to the terms of the promissory note, monthly payments became due and owing.
3. Respondent defaulted on the aforesaid student loans by failing to make the required payments.
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 the default of respondent, petitioner was required to honor its guarantee.
6. At the time petitioner acquired the loan(s), the amount of \$11,713.59 was due and owing.
7. Pursuant to the terms of the loan, interest has continued to accrue.
8. On or about April 30, 2014, petitioner, 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 directing that fifteen percent of respondent's disposable wages be remitted to petitioner until such time as the respondent's student loans have been repaid.
9. Respondent filed an untimely appeal of NJHESAA's Notice of Administrative Wage Garnishment.
10. The amount of \$16,908.71 is presently due and owing.

11. Respondent has not provided any documentation as to what his criminal record is and how that prevents him from meeting the requirements of the state. He has provided no documentation as to the fact that having a license is required for performing the occupation for which he received training.
12. Respondent, in his letter, stated that his driver's license was suspended because of points on his license. He did not state the steps he undertook to get his license restored or that said steps were ineffective.
13. Respondent had a GED at the time he enrolled in the school. He did not provide any information as to how the school did not properly test his ability to benefit from the program.
14. In support of his claim of financial hardship, respondent has provided a list of his income and expenses.
15. Respondent's monthly gross income is \$3,692.40. His monthly net income is \$2,352.12
16. Respondent did not provide any information regarding having any dependents other than the fact that he pays child support monthly.
17. Respondent has a car. His monthly expense for the car is \$179.
18. The National Standards published by the Internal Revenue Service under 26 U.S.C. 7122(c) 2 for one person: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$583.
19. Respondent's rent is \$1295 per month.

20. Respondent listed a monthly child support expense of \$200. However the pay stub that he submitted shows that \$124.00 is garnished from his check for child support.
21. The Local Standards for Housing and Utilities for one person living in Hudson County is \$2,503
22. The National Standards for car ownership is \$517. The Local Standards operating cost for one car in Hudson County is \$342.

### **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:72-1 to 21; 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). New Jersey statutes and regulations require the NJHESAA to purchase certain defaulted student loans and permit NJHESAA to seek

garnishment of wages as one method of repayment. N.J.S.A. 18A:71C-6; N.J.S.A. 18A:72-16; N.J.A.C. 9A:10-1.14.

When a lender submits a claim for purchase by NJHESAA of a defaulted loan, NJHESAA first determines the legitimacy of the claim for purchase by NJHESAA 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, NJHESAA 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. Coe seeks to avoid collection by pleading the following: he did not have a high school diploma or GED when he was enrolled in the school, the school did not test his ability to benefit from the program and he had a condition, i.e criminal conviction, no license and financial hardship.

Coe did not prove by a preponderance of the evidence that he did not have a high school diploma or GED when he enrolled in Lincoln and Lincoln did not test his ability to benefit from the program. Coe had a GED or high school diploma when he enrolled in Lincoln. He did not provide any documentation as to how his ability for the program was not properly tested.

Coe did not prove by a preponderance of the evidence that having a criminal conviction and no driver’s license prevented him from meeting state requirements for performing the occupation for which he was trained. Coe did not provide any

information as to his criminal conviction. He wrote that his driver's license was suspended because of points on his license. He did not state what steps he took to remove his suspension and why they were not successful.

In order to show financial hardship, Coe must prove by a preponderance of credible evidence the amount of the costs incurred for basic living expenses for him exceed the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d).

In this matter respondent's gross monthly income is \$3,692.40. His monthly disposable income, after payroll deductions including child support, is \$2,352.12. Respondent's rent is \$1,295. He did not list a separate utility expense. His total cost for utilities and housing are \$1,295. The National Standards for one person for: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$583. Respondent lists his monthly motor vehicle expenses as \$179.

Respondent's monthly expenses are \$2,057. Respondent's monthly disposable income is \$2,352.12. His income exceeds his expenses by \$295.12. Fifteen percent of respondent's disposable income is 352.81. Coe will suffer a financial hardship if fifteen percent of his disposable income is garnished from his wages. A garnishment of 7.5 percent of respondent's disposable income would be \$176.41, which would leave respondent with \$118.71.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that a wage garnishment of fifteen percent will cause respondent undue hardship because it would exceed his income after expenses. IA wage garnishment of 7.5 percent (\$176.41) will not cause respondent undue hardship because he would be left with \$118.71.

**ORDER**

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 7.5% of respondent's disposable wages.

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) (2007).

February 19, 2015

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DATE  
ljb

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**KIMBERLY A. MOSS, ALJ**

**EXHIBITS**

For Petitioner

- P-1 Agency Documents
- P-2 Letter from Solomon and Solomon Dated February 19, 2015

For Respondent

- R-1 Statements of Income and Expenses
- R-2 Check Stubs
- R-3 Letter from COE