

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 1143-17

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

Petitioner,

v.

REBECCA ANNE SEDLER,

Respondent.

Philip Levitan, Esq., or petitioner (Fein, Such, Khan & Sheppard, P.C.)

Rebecca Anne Sedler, pro se,

Record Closed: February 15, 2017

Decided: February 17, 2017

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

STATEMENT OF THE CASE

Respondent, Rebecca Anne Sedler (Sedler or respondent), applied for and was granted a student loan for the purpose paying tuition to Rider University. Respondent 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 respondent to deduct from her wages, an amount equal to fifteen percent of her 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 she asserts that the garnishment of fifteen percent of her wages would be a hardship.

PROCEDURAL HISTORY

On or about September 28, 2016, 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 17, 2017. Respondent requested a hearing on written statement. I sent the parties a letter on January 30, 2017, stating that any additional documentation must be submitted by February 15, 2017. Petitioner submitted additional documentation on January 31, 2017. I sent a subsequent letter requesting additional information on February 2, 2017. The record closed on February 15, 2016.

FINDINGS OF FACT

The facts are not in dispute. Based upon the documentation submitted by respondent, 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, and the letter and documents submitted by Sedler, I make the following **FINDINGS OF FACTS:**

1. On or about June 26, 2000, the defendant executed a Master Promissory note for guaranteed student loan(s) for the purpose of paying tuition to Rider University. As a result thereof, CitiBank disbursed the sum of \$9,625.00.
2. Pursuant to the terms of the aforesaid promissory/installment note(s), payments became due and owing thereunder on the Guaranteed student loans.
3. Debtor defaulted on the aforesaid student loan(s) by failing to make the payments required thereunder.
4. As a result of the aforesaid default(s), the New Jersey Higher Education Student Assistant Authority was required to honor its guarantee. At the time NJHESSA acquired said loan(s), the amount of \$10,062.76 was due and owing. Interest continued to accrue pursuant to the promissory note. Collection costs have been assessed pursuant to 34 C.F.R. §682.410(b) (2).
5. The amount of \$11,394.48 is presently due and owing.
6. On or about September 28, 2016, NJHESSA, 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 the defendant.
7. The defendant timely filed this appeal of NJHESSA's Notice.
8. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the defendant's employer to deduct fifteen percent (15%) of the defendant's disposable wages and remit the same to the New Jersey Higher Education Student Assistance Authority until such time as the defendant's student loans have been repaid.
9. Respondents alleges that deducting fifteen percent of her disposable wages would be a hardship

10. Respondent has submitted three pay stubs that were not for consecutive dates. One pay stub was for a pay period of May 16, 2016 to May 29, 2016 for an seventeen hours in the net amount of \$306. The second pay stub was for a one day pay period of September 19, 2016 for twenty-two hours in the net amount of \$405. The third pay stub was for the pay period of October 4, 2016 to October 17, 2016 for twenty-five point five hours with a net pay of \$459. Sedler listed her mortgage as \$1700 a month for the household. On February 2, 2017, I sent a letter to respondent requesting she submit her two most recent pay stubs, what portion of the mortgage she is responsible to pay and if she has any other sources of income. Sedler did not respond to my letter.

11. To arrive at Sedler's monthly income I multiplied \$459 by 2.1666 which equals \$994.

12. Sedler list her monthly food costs as \$100 and the following household expenses Sprint \$117 and other household expenses \$250.

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. Respondent seeks to avoid collection by pleading the following financial hardship.

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

Respondent's monthly disposable income is \$994. I cannot determine what portion of the mortgage Sedler pays. She listed a mortgage for the household as \$1700 but did not list how many people in the household contribute to the mortgage. Respondent submitted for monthly food costs of \$500. The National Standards for food for one person is \$307. Respondent submitted expenses for Sprint of \$117 and other household expenses of \$250. The National Standard for miscellaneous expenses is \$119. Respondent's monthly expenses are \$543. Her income exceeds her expenses by \$451. A wage garnishment of fifteen percent of petitioner's disposable income would be \$149 leaving her \$302 per month. This would not be a financial hardship for respondent.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has met its burden to prove the existence and the amount of the claimed debt, and that repayment thereof is in default. Respondent has not provided documentation to support her claim that a wage garnishment of fifteen percent would be a financial hardship.

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 15% of respondent's disposable wages after expenses which is \$149 per month.

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 17, 2017

DATE
ljb

KIMBERLY A. MOSS, ALJ

EXHIBITS

For Petitioner

P-1 Agency Documents

For Respondent

Income and Expenses Documents