

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 01371-16

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

Petitioner,

v.

ENRIQUETA GONZALEZ,

Respondent.

Philip Levitan, Esq., for petitioner (Fein, Such, Khan & Sheppard, attorneys)

Enriqueta Gonzalez, pro se

Record Closed: March 7, 2016

Decided: March 9, 2016

BEFORE **RICHARD McGILL**, ALJ:

The New Jersey Higher Education Student Assistance Authority (hereinafter “petitioner” or “NJHESAA”) seeks an administrative wage garnishment against Enriqueta Gonzalez (hereinafter “respondent,” “defendant” or “debtor”) as the result of her failure to repay a student loan guaranteed by petitioner. Respondent opposes the administrative wage garnishment on the grounds that it would result in an extreme financial hardship.

PROCEDURAL HISTORY

On or about September 30, 2015, petitioner issued a notice of administrative wage garnishment to respondent. In response, respondent submitted a request dated October 28, 2015, for a hearing on the papers.

The matter was transmitted to the Office of Administrative Law on January 21, 2016, for determination as a contested case. By letter dated January 28, 2016, the undersigned advised the parties that any additional documentation must be submitted by February 22, 2016. The hearing on the papers was conducted on March 7, 2016.

ISSUE

Based upon respondent's hearing request, the issue in this proceeding is whether garnishment of fifteen percent of respondent's disposable income would result in an extreme hardship.

UNDISPUTED FACTS

The facts in regard to the underlying indebtedness are not in dispute, and I **FIND** as follows:

1. On or about November 16, 2002, the defendant executed a Master Promissory note for guaranteed student loan(s) for the purpose of paying tuition to Dover Business College. As a result thereof, ASAP/Union Bank & Trust disbursed the sum of \$12,372.00.
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 Assistance Authority was required to honor its guarantee. At the time NJHESAA acquired said loan(s), the amount of \$16,450.53 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. On or about September 30, 2015, NJHESAA, acting pursuant to 20 U.S.C.A. §1095a(a) et seq. and 34 C.F.R. §682.410(b)9, issued a notice of administrative wage garnishment to the defendant.
6. The defendant timely filed this appeal of NJHESAA's notice.
7. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the defendant's employer to deduct from the wages of the defendant, an amount equal to 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.
8. The amount due and owing as of February 2, 2016, is \$21,912.38

SUMMARY OF EVIDENCE

Janice Seitz is employed by NJHESAA as a Program Officer in its Servicing/Collections Unit. The affidavit of Ms. Seitz is the source for the undisputed facts as set forth above.

Respondent requested a hearing based on a claim that garnishment of fifteen percent of her disposable income would result in extreme financial hardship. With her hearing request, respondent submitted a letter which states that she has various illnesses and that she supports her mother in Colombia. Respondent attached lists of her illnesses and medications, but she did not provide any documentation of her income or expenses.

LAW AND ANALYSIS

Pursuant to federal law, a guaranty agency such as petitioner may garnish the disposable pay of an individual to collect the amount owed by that individual, 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, petitioner must present records to establish the existence and amount of the debt and that the debt is delinquent. 34 C.F.R. § 34.14(a). A debtor who objects to a proposed garnishment on the basis of financial hardship has the burden to prove by a preponderance of the credible evidence that withholding the amount of wages proposed in the notice would leave the individual unable to meet basic living expenses. 34 C.F.R. § 34.14(c)1. To prove a claim of financial hardship, the debtor must prove by credible documentation the amounts of costs incurred for basic living and the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d).

Here, petitioner established the existence and amount of respondent's debt and the fact that respondent is delinquent with respect to the debt. In contrast, respondent has failed to present any documentation in regard to her income and expenses. Therefore, I **CONCLUDE** that petitioner has demonstrated by a preponderance of the credible evidence that an administrative wage garnishment is warranted by the facts of this case and that respondent has failed to establish that an administrative wage garnishment would create an extreme financial hardship.

Accordingly, it is **ORDERED** that an administrative wage garnishment shall be issued immediately directing respondent's employer to deduct from her wages an amount equal to fifteen percent of her disposable wages and remit this amount to the

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New Jersey Higher Education Student Assistance Authority until such time as her outstanding debt resulting from her student loan has been repaid.

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

March 9, 2016

DATE

RICHARD McGILL, ALJ

APPENDIX

EXHIBIT LIST

P-1 Affidavit of Janice Seitz with attachments

R-1 Letter dated November 20, 2015, from Enriqueta Gonzalez with attachments