

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 08720-14

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

Petitioner,

v.

ANTOINE CARRINGTON,

Respondent.

Doug Fisher, Esq., appearing for petitioner

Antoine Carrington, respondent appearing pro se,

Record Closed: July 30, 2014

Decided: August 1, 2014

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Antoine Carrington (Carrington or Respondent), applied for and was granted a student loan for the purpose of consolidation. 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 Carrington 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 that the garnishment of fifteen percent of his wages would be a hardship.

On or about March 26, 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 July 7, 2014. Respondent requested a telephone hearing. The hearing was held on July 30, 2014. I closed the record at that time.

FINDINGS OF FACT

The facts in this matter are not in dispute. Based upon the affidavit and testimony of Janice Seitz, Program Officer with the NJHESAA and Carrington 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 May 9, 2005, respondent executed an application promissory note for a guaranteed student loan for the purpose of consolidation. Sallie Mae in reliance upon the application promissory note disbursed the sum of \$20,011.
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 \$15,745.15 was due and owing.
7. Pursuant to the terms of the loan, interest has continued to accrue.
8. On or about March 26, 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 a timely appeal of NJHESAA's Notice of Administrative Wage Garnishment.
10. The amount of \$ 18,560.29 is presently due and owing.
11. In support of his claim of financial hardship, respondent has provided a list of his income and expenses.
12. Respondent is married with one child. His wife's niece lives with them.
13. Respondent's wife is unemployed.
14. Respondent has a car. He has provided no evidence that he is making payments on the car.

15. The National Standards published by the Internal Revenue Service under 26 U.S.C. 7122(c) 2 for a family of four for: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$1,482.
16. Respondent's rent is \$1,059 per month.
17. Respondent has the following monthly expenses: Bank of America \$1,059, Sprint 150, PSE&G 150, United Water \$150, Progressive Car Insurance \$150, Comcast Cable \$150, food 200 and miscellaneous expenses \$300.
18. Respondent is paid \$1,249 biweekly. His biweekly income multiplied by 2.17 equals \$2,710, which is his monthly income.
19. The Local Standards for Housing and Utilities for a family of four living in Hudson County is \$3,510
20. The National Standards for car ownership in Hudson County 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. Carrington seeks to avoid collection by pleading financial hardship.

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

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.

In this matter petitioner's rent is \$1,059. His utility costs for PSE&G, Sprint, United Water and Comcast Cable are \$600. His total cost for utilities and housing are \$1,659, which is less than the Local Standards for housing and utilities in Hudson County. The Local Standards for a family of four for: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$1,482. Respondent did not supply any ownership costs for his motor vehicle. Respondent's operation cost of his car includes \$150 insurance cost. Respondent's monthly expenses are \$3,291. Respondent's monthly disposable income is \$2,710. His expenses exceed his income by \$581.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that a wage garnishment of respondent will cause undue hardship because his expenses exceed his income.

ORDER

Based upon all of the foregoing, it is **ORDERED** that petitioner's request that respondent be the subject of a wage garnishment is **DENIED**.

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(N) (2010).

August 1, 2014

DATE
ljb

KIMBERLY A. MOSS, ALJ

EXHIBITS

For Petitioner

P-1 Agency Documents

For Respondent

R-1 Statement of Income and Expenses

R-2 Check Stub