

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 8883-16

AGENCY DKT. NO. HESAA

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

Petitioner,

v.

MAISSA CHEBLY,

Respondent.

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

Maissa Chebly, respondent, pro se

Record Closed: August 3, 2016

Decided: August 30, 2016

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 for an order of wage garnishment against respondent.

Respondent, Maissa Chebly, contested this appeal by the agency.

Today's decision grants the agency's petition to impose garnishment.

PROCEDURAL HISTORY

This is an appeal brought by the agency, NJHESAA, seeking to garnish the wages of respondent. It was filed in the Office of Administrative Law (OAL) on June 14, 2016. Respondent Chebly challenges the proposed garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on June 29, 2016, to hear and decide the matter. Respondent requested that the case be heard by telephone but was unavailable at her phone number of record on the date and time of hearing for which she was given notice. Consequently, as required by law, the matter went forward without her testimony at 10:30 a.m., on August 3, 2016. The record then closed.

ANALYSIS OF THE RECORD

Background:

The agency presented its factual case through its witness, **Aurea Thomas**, Sr. Investigator, NJHESAA, accompanied by exhibits, none of which was contested:

Ms. Thomas adopted as her own the sworn testimony of Janice Seitz, Program Officer, NJHESAA, and stated that she was familiar with all the books and records involved in the case. They disclosed that on January 23, 2008, respondent Chebly executed a Federal Stafford Loan Master Promissory Note in the amount of \$5,250 drawn on the lender, Wachovia Bank, for the purpose of paying tuition at Rider College (Exhibits P-1, P-2). Eventually, respondent defaulted on the loan, and the lender sought repayment from the federal statutory guarantor, NJHESAA. At that time, the principal and interest amounted to \$6,057.99. As federal guarantor, NJHESAA reimbursed the lender by check on January 1, 2012 (Exhibit P-3).

After submitting payments to petitioner NJHESAA over time, respondent eventually fell into default again, and on March 30, 2016, the agency notified respondent finally that it intended to garnish her wages, absent an arrangement to continue payments on the loan. It indicated that she had a right of appeal (Exhibits P-5, P-6). By June 1, 2016, petitioner NJHESAA had collected a total of \$6,666.87 from respondent, including principal, accumulated interest and collection fees (Exhibit P-4). The balance due registered in the agency's default master screen (Exhibit P-3) was \$849.

Replying to the agency, respondent forwarded her request for the instant hearing. Her ground for appeal was that a garnishment would be an extreme financial hardship (Exhibit P-7). So informed, petitioner NJHESAA mailed to

respondent its customary financial statement form requesting the information specified therein. It was not returned.

Petitioner NJHESAA now seeks garnishment in the amount of 15 percent of respondent's disposable income.

Findings of Fact:

I **FIND** that no material facts proffered by either side are in dispute, only their legal import is contested.

Conclusions of Law

Burden of Proof:

The burden of proof 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:

The agency has carried its burden of persuasion:

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 was supported by the unchallenged proffer of Exhibits P-1 through P-8, all now in evidence. It is plain that (a) the terms of the promissory notes, the authenticity or accuracy of which are not in dispute, (b) the financial figures standing as the amount owed, and (c) the enabling legislation (the Act) administered by NJHESAA, all compel the agency's exercise of its authority to recover her expended funds with interest and associated fees.

The agency having once proved the foregoing, the burden of demonstrating by a preponderance of evidence that "extreme financial hardship" exists which should prevent garnishment then shifts to respondent Chebly. Respondent did not succeed in carrying that burden. The opportunity to do so should have begun with completion of the financial statement form forwarded to her by the agency (Exhibit P-8). Respondent did not choose to do so.

Official notice may be taken that the agency as a standard practice relies on statutorily engendered National Guidelines to calculate the individual financial resources of a borrower. Calculations thereunder take into account a borrower's adjusted gross income and family size. The agency uniformly applies these guidelines to all borrowers. See, NJHESAA v. Merrill, HEA 0344-16, Final Decision (July 12, 2016) at p. 11. Respondent does not suggest they were not followed here.

Therefore, without any timely, up-to-date financial information enabling it to do otherwise, the agency, NJHESAA, persuasively argues that it should now be authorized to impose a garnishment at the rate of 15 percent of disposable wages sought. Fifteen percent, the maximum amount allowed by law is appropriate because the agency and the present record are without adequate data to suggest a different calculation.

DECISION

I ORDER, therefore, for the reasons stated above, that the total amount owed and defined of record, plus accrued interest and fees **be recovered by garnishment**. The amount to be deducted is **15 percent of respondent Maissa Chebly's disposable pay**. 20 U.S.C.A. 1095(a)(1).

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

August 30, 2016
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency:

Date Mailed to Parties:

mph

LIST OF WITNESSES:

For petitioner:

Aurea Thomas

For respondent:

None

LIST OF EXHIBITS:

For petitioner NJHESAA:

- P-1 Affidavit of Janice Seitz, dated May 20, 2016
- P-2 True Copy of Federal Stafford Loan Master Promissory Note of Maissa Chebly, dated 1/23/08
- P-3 NJHESAA Default Master Screen, Maissa M. Chebly, June 1, 2016
- P-4 NJHESAA Payment History, Maissa M. Chebly, June 1, 2016
- P-5 NJHESAA Student Correspondence record, Maissa M. Chebly, June 1, 2016.
- P-6 NJHESAA Notice of Intent to Garnish form
- P-7 Request for Hearing, Maissa M. Chebly, dated 4/13/16
- P-8 NJHESAA Financial Statement form

For respondent:

None