

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 08938-16

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

Petitioner,

v.

DOROTHY WILSON,

Respondent.

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

No appearance by or on behalf of respondent

Record Closed: July 29, 2016

Decided: August 3, 2016

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

This is an appeal of a Notice of Administrative Wage garnishment issued by the New Jersey Higher Education Student Assistance Authority ("the Authority") to collect a defaulted student loan by garnishing the borrower's wages. The Authority 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:71A-1 et. seq.; N.J.A.C. 9A:10-1.4. After purchasing an overdue loan from a lender, the Authority may collect the debt by appropriate means, including garnishment of wages. 20 U.S.C.A. § 1095a permits

the debtor to request an administrative hearing before an independent hearing official prior to issuance of a garnishment order.

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.

PROCEDURAL HISTORY

On or about March 7, 2016, the Authority served a Notice of Administrative Wage Garnishment on Dorothy Wilson. By written request dated March 28, 2016, Wilson sought a hearing contending that she could not afford the proposed garnishment. She requested a hearing based on her written statement and the records in her loan file.

On June 14, 2016, the Authority transmitted the matter to the Office of Administrative Law ("OAL") for hearing as a contested case. I communicated via letter with the parties on June 20, 2016, and advised that the matter would be considered on the written submissions from the parties as requested. I offered Wilson an opportunity to supplement her letter of appeal with additional documentation, and specifically asked for the financial disclosure forms and supporting documents referred to in the Request for Hearing form. I directed that any such submission be filed with me on or before July 29, 2016, and I informed Wilson that if I did not receive timely additional submissions from her I would base my decision on the documents currently in the file. Wilson submitted nothing further, and I closed the record on July 29, 2016.

FINDINGS OF FACT

From the file submitted by the Authority, I **FIND** the following facts:

On or about August 12, 2005, Wilson executed a PLUS master promissory note for guaranteed student loans for the purpose of paying tuition to Saint Peters University. As a result thereof, Sallie Mae Education Trust disbursed the sum of \$18,000.00.

Pursuant to the terms of the promissory/installment note, payments became due and owing. Wilson defaulted on the student loan, and failed to make the required payments. At the time that the Authority acquired the loan, Wilson owed \$24,903.31, with interest continuing to accrue. Collection costs have also been assessed pursuant to 34 C.F.R. §682.410(b)(2). The Authority seeks an order directing Wilson's employer to deduct from her wages an amount equal to 15% of her disposable wages and remit that amount to the Authority until such time as the student loans have been fully repaid.

Wilson claims in a letter that accompanied her appeal that she cannot afford the proposed garnishment. She shared no details about her income other than to indicate that she lives from paycheck to paycheck. She shared portions of documents that purportedly reflect another loan obligation, but no other documentation. Wilson indicates in her letter of appeal that she has other bills to pay, and would like to pay no more than \$100 per month. She shared no details about these other financial obligations, however.

CONCLUSIONS OF LAW

Based on the foregoing facts and the applicable law, I **CONCLUDE** that Wilson is subject to a garnishment of her wages. 20 U.S.C.A. § 1095a provides that 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 repayments 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.

A guaranty agency is a nonprofit organization or state agency, such as the Authority, 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 Authority to purchase certain defaulted student loans and permit the Authority to seek garnishment of wages as one method of repayment. N.J.S.A. 18A:71C-6; N.J.A.C. 9A:10-1.14. When a lender submits a claim for purchase by the Authority of a defaulted loan, the Authority first determines the

legitimacy of the claim and ensures that all federal and state requirements for default aversion have been followed. If the Authority determines that "due diligence" has been met and purchases the loan from the lender, the Authority then seeks to collect on the debt. N.J.A.C. 9A:10-1.4(b)(8).

Initially, the Authority bears the burden of proving the existence and amount of the debt. 34 C.F.R. § 34.14(a). Once that burden is satisfied, the burden shifts to the borrower to prove one of the valid reasons to discharge the loan or to postpone issuance of a wage garnishment. 34 C.F.R. § 34.14 (c) and (d). Here, the Authority produced adequate documentation establishing the existence of the debt and the amount currently delinquent.

In order to show financial hardship, Wilson must prove by a preponderance of credible evidence that withholding the amount of wages proposed in the notice would leave her unable to meet basic living expenses. 34 C.F.R. § 34.14(c)(1). It is her burden to present via appropriate documentation the costs incurred for her basic living expenses, and the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d). She has not provided the financial information required by the regulation, and I thus have no facts upon which to base a determination of financial hardship.

ORDER

Based on the foregoing, it is **ORDERED** that an administrative wage garnishment be issued directing Wilson's employer to deduct from her pay an amount equal to 15% of her disposable pay and remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as the outstanding debt resulting from her student loan, including accrued interest, is paid.

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

August 3, 2016

DATE

ELLEN S. BASS, ALJ

Date Received at Agency

Date Mailed to Parties:

APPENDIX

EXHIBITS

For Petitioner:

Hearing Packet

For Respondent:

None