

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 9600-17
AGENCY DKT. NO. HESAA

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

Petitioner,

v.

ELIZABETH FERRARA,

Respondent.

Richard W. Krieg, Esq., for petitioner (Law Offices of Richard W. Krieg,
attorney)

Elizabeth Ferrara, respondent, pro se, through written statement

Record Closed: September 12, 2017

Decided: October 16, 2017

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, Elizabeth Ferrara, 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 July 5, 2017. Respondent Ferrara challenges the proposed garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on July 26, 2017, to hear and decide the matter. Respondent asked that her case be decided on the written record. Hearing nonetheless commenced to receive the State's case on September 12, 2017. On that date, the record 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 stated that she was familiar with all the books and records involved in the case. She stated that respondent had executed a Federal Stafford Loan Master Promissory Note on January 5, 2005. (Exhibit P-1.) In time, the loan entered default. The lender submitted its claim for reimbursement to the guarantor, NJHESAA (Exhibits P-2, P-3.), asking for and receiving principal and interest reimbursement in the amount of \$32, 219.32. Thereafter, the agency as guarantor, paid the claim and undertook to manage the debt. When no voluntary payments were submitted, NJHESAA notified respondent Ferrara that, absent compliance, garnishment would follow. (Exhibit P-6.)

Respondent appealed the proposed action. She reduced to writing her reasons, and requested a hearing on the written record. (Exhibits P-3, P-4.) The agency thereafter reviewed respondent's financial statement submission (Exhibit P-7.) but could not find grounds for cancellation, delay or lowering of payments, though it did make attempts to reach out and negotiate an acceptable level of remittance.

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).

However, where, as here, a respondent borrower offers an affirmative defense, claiming “extreme financial hardship,” or unenforceability of recovery on the debt, the burden of persuasion rests on that respondent throughout the proceeding, as does the “burden of production” and going forward on that issue. Nevertheless, this burden of production is “so light as to be little more than a formality.” State v. Segars, 172 N.J. 481, 494 (2002). All that is needed is “a genuine issue of fact framed with sufficient clarity so that the other party has ‘a full and fair opportunity’ to respond.” Id., at 494-495. Consequently, once a prima facie case is established, the burden of going forward with countering proofs shifts (but never the burden of persuasion). Cf. N.J.R.E. 101(b)(2).

Arguments of the parties:

The agency, NJHESAA, through Ms. Thomas, contends that garnishment is necessary, and that 15 percent of disposable wages is the appropriate portion. Ms. Thomas testified that in her statement (Exhibit P-5.), respondent Ferrara claims that she cannot afford to make any payments. The agency made every effort to contact respondent with a view toward placing her in a loan rehabilitation program, consistent with an agency-intent to lower her payments, if possible. However, the agency's efforts to contact respondent by phone and mail were not successful, as the history of correspondence reveals. (Exhibit P-6.) Questions remain unanswered with respect to the tax form 1040, which she has submitted with her filled-out financial statement. Ms. Thomas testified that without clarification and answers to those questions, which conversations with appellant might bring, the agency cannot do less than ask for garnishment at the statutory maximum of fifteen percent.

Respondent Elizabeth Ferrara, relying on her statement on appeal (Exhibit P-5.) gives an account of her experiences in several educational institutions. She states that she had been misdirected in college in her selection of courses, and had been similarly misled by Capella, an online institution. Respondent stated further that she had been falsely promised job placement, which did not occur. All her courses taken together did not collectively entitle her to pursue the vocation which she still seeks. As a result, since she cannot now be employed in the field which the schools assured her would be available, respondent believes the loan should be treated as an unenforceable debt. (Exhibit P-4.)

As to ability to pay, respondent writes on appeal that her employment is currently limited to child care, which does not bring her beyond a yearly wage of \$32,000, an amount insufficient to maintain a mother and three children. As a detailed foundation for this claim, she relies on her financial statement to support

her position that garnishment in the amount of 15 percent of her disposable pay would be an extreme financial hardship. (Exhibit P-4.)

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 supported by the unchallenged proffer of Exhibits P-1 through P-7, 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.

In her defense, respondent claims ameliorating circumstances, namely "extreme financial hardship," as cited in her Request for Hearing Form. (Exhibit P-12.) She believes this hardship is justification for not submitting any payments and for avoidance of garnishment. This argument creates an affirmative defense. On this issue, it is respondent who has the burden of persuasion. She must show with preponderating evidence how the underlying facts and the law compel a retreat by the agency from its request to initiate garnishment. This respondent has not done.

It is praiseworthy that respondent has provided extensive information through return of her financial statement with supporting documents. To that extent she has satisfied the evidentiary demands of an affirmative defense,

requiring rebuttal by the agency to avoid adverse findings. Meeting that requirement, the agency through Ms. Thomas has credibly related its efforts in writing and by phone to obtain information in addition to that in the financial statement, with a view toward lowering payment amounts. The agency could not elicit a response. For that reason, the agency argues, it is compelled to move before this tribunal for garnishment at the full amount authorized by statute: 15 percent.

It is a fair construction of the Act and its implementing rules that the agency is now entitled to be made whole. To achieve such "wholeness," at this point repayment can only be compelled through garnishment. The garnishment should go forward by adding the amounts of respondent's unpaid principal and capitalized interest to the mathematical and demographic mix of factors the agency normally employs when computing remaining monthly schedules of payment. Official notice, N.J.A.C. 1:1-15.2 permits observation here that the agency in this and other cases has disclosed that this is usually done through adherence to comparative National Guidelines utilized by NJHESAA. The monthly amounts calculated thereunder would be spread over the life of the loan to assure full repayment.

In the normal course, such an apportionment of repayments as the foregoing describes would not exceed the statutory cap of 15 percent of disposable wages and it might well fall below it, depending on the facts. That possibility remains open, should respondent hereafter contact the agency. Nevertheless, for reasons outlined above, the agency at this juncture is entitled to the full garnishment allowed under the Act. Having not been supplied the information it sought from respondent, the agency insists that it is entitled to a grant of its uniform, across-the-board application of a full 15 percent. This is the remedy it seeks from all borrowers in comparable instances.

Under these circumstances, the agency's petition makes administrative sense. For lack of fundamental borrower-supplied data, the agency has no other choice but to move for maximum relief. Favoring an order is the inarguable legal fact that the agency's practice comes within the congressional discretion which it has been granted. Once a voluntary repayment schedule is not complied, and the borrower has not provided information to allow application of the National Guidelines to her or his circumstances, garnishment at full 15 percent is unavoidable. It is a means to equal treatment. On this record, the agency is justified in its request by respondent's inaction.

Respondent's argument that the debt is unenforceable is rejected. Her letter accompanying appeal does not include reference to any statute or rule or to any other authorizing source which would provide the essential authority to prevent collection on the debt. Lacking this, her position is without legal basis.

Therefore, the petitioning agency, NJHESAA, should now be authorized to impose a garnishment at the rate of 15 percent of disposable wages sought.

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'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).

October 16, 2017
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency:

Date Mailed to Parties:

lam/mph

LIST OF WITNESSES:

For petitioner:

Aurea Thomas

For respondent:

Elizabeth Ferrara, by written statement

LIST OF EXHIBITS:

For petitioner NJHESAA:

- P-1 Federal Stafford Loan Master Promissory Note, dated 1-5-05.
- P-2 FFELP Claim Form submitted by lender
- P-3 Default Master Screen, dated September 12, 2017.
- P-4 Request For Hearing, Elizabeth Ferrara, dated 1/10/17
- P-5 Letter argument on appeal from Elizabeth Ferrara, dated 1/10/17
- P-6 Correspondence History Screen
- P-7 Financial Statement, Elizabeth Ferrara

For respondent:

None