

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 9605-17
AGENCY DKT. NO. HESAA

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

Petitioner,

v.

MATTHEW J. STEEL,

Respondent.

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

No appearance by Matthew J. Steel, respondent, pro se

Record Closed: September 6, 2017

Decided: October 2, 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 for default in payments.

Respondent, Matthew J. Steel, contested this appeal by the agency on the grounds of financial hardship.

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 7, 2017. Respondent Steel 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. Hearing convened on September 6, 2017, and 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 adopted as her own the sworn written testimony (Exhibit P-1.) of Janice Seitz, Program Officer, NJHESAA, and stated that she herself was familiar with all the books and records involved in the case. She offered the following factual background through her testimony:

In May 2005 respondent Steel applied for and executed a promissory note consolidating loans under the provisions of the Federal Family Education Loan Program. (FFELP; Exhibits P-1, P-2.) Eventually, default occurred (Exhibits P-3, P-4, P-5.) No voluntary repayments on the loan had been made. (Exhibit P-5.)

Having entered default, and after failing to comply with a lower payment suggested by NJHESAA, respondent was sent a notice indicating that garnishment would follow, absent compliance with payment obligations. A request for hearing form accompanied the notice. (Exhibits P-6, P-7.) Respondent returned the form without indicating what was contested. (Exhibit P-8.) Petitioner, NJHESAA, then forwarded to him a financial statement form, never returned. (Exhibit P-9.) Subsequently, NJHESAA received a letter (Exhibit P-10.), maintaining that he could not afford the agency's proposed payments. Ms. Thomas related that NJHESAA attempted to accommodate respondent, and lowered the monthly payment to do so. Nonetheless, no payments were submitted. The agency now seeks an order of garnishment for recovery of the balance due on the consolidated loans as of the hearing date: \$26,783.27, and for recovery of any continuing interest and collections costs subsequently. (Exhibit P-11.) They ask for 15 percent of expendable income, for lack of the financial information sought (Exhibit P-9.) which might have established lesser remissions.

Respondent Steel does not dispute his debt or the accuracy of its calculation by the agency. However, without providing his most recent tax returns and most recent pay stub along with listed information (Exhibit P-9.), respondent

argues in his one submission on appeal (Exhibit P-10.) that he can pay no more than \$25 per month. He has but one job. Lack of a car prevents taking secondary employment. Respondent adds that he has very little income, and less that is disposable. As a result, he is applying for bankruptcy. Once he brings his financial condition under control he will pay more and “get this debt fully taken care of.”

Findings of Fact:

I FIND that no material facts which are now of record in this dispute are contested, with respect to the debt or its accurate calculation.

I FIND further that respondent has not submitted the information requested by NJHESAA which would enable it to identify what level of monthly payment would now be appropriate under its guidelines.

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,” 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)

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-9, 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 the expended funds.

Respondent Steel has not satisfied his affirmative defense obligations of proof:

In his letter-defense (Exhibit P-10.), respondent claims ameliorating circumstances tantamount to “extreme financial hardship,” though he did not specifically advert to this cause in his Request for Hearing Form. (Exhibit P-8.) He apparently believes this hardship is justification for not submitting any payments and for avoidance of garnishment. The argument creates an affirmative defense. On this issue it is respondent who has the burden of persuasion.

Respondent 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. He has not submitted either his 1040 tax form or his most recent pay stub, which were requested by the agency in the financial statement form it forwarded to him. Neither these documents nor the completed financial statement were returned. They are customarily the de minimis documents needed for the agency to reach a conclusion concerning his claims. Respondent by inaction therefore has rendered the agency unable to apply its national guidelines or any other circumstance-related standard. Absent those documents, the agency has inadequate information to examine and upon which to decide whether her claim is valid.

The agency’s move to garnish at the full 15 percent of disposable wages:

The agency moves for the full garnishment allowed under the Act. Having not been supplied the figures 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 in all similar 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 make the request. Favoring an order is the inarguable legal fact that the agency's practice comes within the statutory discretion which it has been granted.

More to the point, it is respondent who has the obligation to bring preponderating proofs to his affirmative defense of extreme financial hardship. He has not met this obligation. Once a voluntary repayment schedule is not adhered to by any borrower, and the borrower has not provided information to allow application of the comparative national guidelines to her or his circumstances, garnishment at full 15 percent is unavoidable. Therefore, the agency, NJHESAA, should now be authorized to impose a garnishment at the 15 percent of disposable wages sought.

DECISION

I ORDER 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 income**. 20 U.S.C.A. 1095(a)(1).

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(J) (2015).

October 2, 2017

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 March 24, 2017, with attachments.
- P-2 Federal Consolidation Loan Application and Promissory Note, dated 5-05
- P-3 Claim Worksheet Summary
- P-4 Default Master Screen
- P-5 Payments Record Screen
- P-6 Correspondence Record
- P-7 Sample Form: Notice of Intent to Garnish and Request for Hearing
- P-8 Request for Hearing, Matthew Steel, undated.
- P-9 Sample Form: Financial Statement.
- P-10 Letter: Matthew Steel, undated
- P-11 Default Master Screen: 9/6/2017

For respondent:

None