

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 13877-15

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

Petitioner,

v.

AMY HENTHORN JONES,

Respondent.

No appearance by or for petitioner

No appearance by or for respondent

Record Closed: November 27, 2015

Decided: November 30, 2015

BEFORE **RICHARD McGILL**, ALJ:

The New Jersey Higher Education Student Assistance Authority (hereinafter “petitioner” or “NJHESAA”) seeks an administrative wage garnishment against Amy Henthorn Jones (hereinafter “respondent”, “defendant” or “debtor”) as the result of her failure to repay a student loan guaranteed by petitioner. Respondent opposes the administrative wage garnishment on the grounds that it would result in an extreme financial hardship.

PROCEDURAL HISTORY

On or about May 13, 2015, petitioner issued a notice of administrative wage garnishment to respondent. In response, respondent submitted a request dated June 3, 2015, for a hearing on the papers.

The matter was transmitted to the Office of Administrative Law on September 1, 2015, for determination as a contested case. By letter dated September 24, 2015, the undersigned advised the parties that any additional documentation must be submitted by October 19, 2015. An extension was granted at respondent's request, and she submitted additional documentation. The hearing on the papers was conducted on November 27, 2015.

ISSUE

Based on respondent's hearing request form, the issue is whether garnishment of fifteen percent of respondent's disposable income would result in an extreme financial hardship.

UNDISPUTED FACTS

The facts in regard to the underlying indebtedness are not in dispute, and I **FIND** as follows:

1. On or about September 4, 2002, the defendant executed an application/promissory note for a guaranteed student loan for the purpose of consolidation. As a result thereof, Sallie Mae disbursed the sum of \$43,645.39.
2. Pursuant to the terms of the aforesaid promissory/installment note(s), payments became due and owing thereunder.
3. Debtor defaulted on the aforesaid student loan(s) by failing to make the payments required thereunder.

4. As a result of the aforesaid default, the New Jersey Higher Education Student Assistance Authority was required to honor its guarantee. At the time NJHESAA acquired said loan(s), the amount of \$57,695.16 was due and owing. Interest continued to accrue pursuant to the promissory note. Collection costs have been assessed pursuant to 34 C.F.R. § 682.410(b)(2).
5. On or about May 13, 2015, NJHESAA, acting pursuant to 20 U.S.C.A. § 1095(a) et seq. and 34 C.F.R. § 682.410.410(9), issued a notice of Administrative Wage Garnishment to the defendant.
6. The defendant timely filed this appeal of NJHESAA's Notice of Administrative Wage Garnishment.
7. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the defendant's employer to deduct from the wages of the defendant, an amount equal to fifteen percent (15%) of the defendant's disposable wages and remit the same to the New Jersey Higher Education Student Assistance Authority until such time as the defendant's student loans have been repaid.

SUMMARY OF EVIDENCE

Janice Seitz is employed by NJHESAA as a Program Officer in its Servicing/Collections Unit. The affidavit of Ms. Seitz states that the amount due and owing on respondent's student loans is \$57,695.16 and that she is not making the required payments.

Respondent requested a hearing based on a claim that garnishment of fifteen percent of her disposable pay would result in an extreme financial hardship. With her hearing request, respondent submitted a form which stated that her monthly income is \$1,400.00. The attached documentation indicated that for a two-week period ending April 25, 2015, her gross income was \$1,077.18 and her net pay was \$692.46. For two-

week period ending May 10, 2015, respondent's gross income was \$1,187.04 and her net pay was \$780.63. The employer was located in New Orleans, Louisiana.

Respondent submitted additional documentation including W-2 Forms from 2014 and an earnings statement for Amy L. Franklin for a two-week period ending November 12, 2015. For the two-week period, respondent's gross earnings were \$1,485.00 and her net pay was \$1,184.72. The employer was located in Marietta, Georgia.

Respondent states that her monthly expenses include \$780 for rent, approximately \$250 for utilities and \$80 for car insurance. She expects to purchase health insurance by December 15, 2015. Respondent did not provide any documentation of her expenses.

LAW AND ANALYSIS

Pursuant to federal law, a guaranty agency such as petitioner may garnish the disposable pay of an individual to collect the amount owed by that individual, if he or she is not currently making the required repayment. 20 U.S.C.A. § 1095a(a) The amount deducted may not exceed fifteen percent of disposable pay. 20 U.S.C.A. § 1095a(a)1.

In order to impose an administrative garnishment, petitioner must present records to establish the existence and amount of the debt and that the debt is delinquent. 34 C.F.R. § 34.14(a). A debtor who objects to a proposed garnishment on the basis of financial hardship has the burden to prove by a preponderance of the credible evidence that withholding the amount of wages proposed in the notice would leave the individual unable to meet basic living expenses. 34 C.F.R. § 34.14(c)1. To prove a claim of financial hardship, the debtor must prove by credible documentation the amounts of costs incurred for basic living and the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d).

Here, petitioner established the existence and amount of respondent's debt and the fact that respondent is delinquent with respect to the debt. In contrast, respondent has failed to present any documentation in regard to her expenses. Therefore, I **CONCLUDE** that petitioner has demonstrated by a preponderance of the credible evidence that an administrative wage garnishment is warranted by the facts of this case and that respondent has failed to establish that an administrative wage garnishment would create an extreme financial hardship.

Accordingly, it is **ORDERED** that an administrative wage garnishment shall be issued immediately directing respondent's employer to deduct from her wages an amount equal to fifteen percent of her disposable wages and remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as her outstanding debt resulting from her student loan has been repaid.

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

November 30, 2015

DATE

RICARD McGILL, ALJ

Date Received at Agency

November 30, 2015

Date Mailed to Parties:

ljb

APPENDIX

WITNESS LIST

None

EXHIBIT LIST

P-1 Affidavit of Janice Seitz dated August 25, 2015, with attachments

R-1 Alternative Document of Income with attachments