

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 15059-16
AGENCY DKT. NO. HESAA

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

Petitioner,

v.

DAWN CRANMER,

Respondent.

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

Dawn Cranmer, respondent, pro se, did not appear

Record Closed: November 7, 2016

Decided: December 6, 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, Dawn Cranmer, contests 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 September 23, 2016. Respondent Cranmer challenges the garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on October 20, 2016, to hear and decide the matter, the hearing of which was scheduled for, convened, and concluded on November 7, 2016.

ANALYSIS OF THE RECORD

Background:

Testimony and exhibits were provided by the agency through Brian Lyszkiewicz, Student Loan Investigator, NJHESAA, who attested that he was familiar with the books and records in the case, and could adopt as his own the

certification of Program Officer Janice Seitz, NJHESAA (the agency) (Exhibit P-1). The following facts were adduced which are not in contention:

On June 2, 2006, respondent Cranmer borrowed the sum of \$6,625. The monies were to be used for tuition at the school of her choice, Gibbs College (Exhibits P-1, P-2). Eventually, respondent defaulted on the loan, which had been made by the Sallie Mae Education Trust, the lender. The latter sought reimbursement. The agency, NJHESAA, which serves as guarantor of such loans under federal law, purchased the debt, which at the time of reimbursement to the lender amounted to \$9,270.08, including principal and interest.

As new owner of the debt, the agency sought payments from respondent pursuant to a formal schedule (Exhibits P-4, P-5). Notwithstanding, NJHESAA was not repaid either, though some monies were recovered through tax offset (TOP) and set off of individual liability (SOIL) programs. The agency thereafter imposed a garnishment on respondent's disposable income at the rate of 15 percent (Exhibits P-1, P-5).

Despite respondent not having filed a timely appeal, the agency accepted her petition, initiated by a Request for Hearing form (Exhibit P-8), a proceeding she elected to be conducted by telephone on the record. The agency paused the already-imposed garnishment pending disposition of her appeal. The pre-typed reason she checked on the form to justify ending garnishment stated:

I do not owe the full amount shown because I repaid some or all of this loan. (Enclose copies of the front and backs of all checks, money orders, and any receipts showing payments made to the holder of the loan.)

Respondent did not submit any records as evidence to support her claim, nor was she available, despite official notice to her address of record, for the hearing convened at her request.

Today's decision arises from the foregoing facts as well as from the agency testimony and the exhibits submitted.

Findings of Fact:

I **FIND** that none of the material facts submitted in evidence have been disputed.

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, may not only proceed from the mouth of a credible witness. 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 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 unrebutted 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.

Respondent did not provide more than an unsupported claim that the amount she owes is inaccurate (Exhibit P-8). Her affirmative evidentiary obligation has therefore not been satisfied.

DECISION

I ORDER, therefore, that the total amount of principal owed and defined of record, plus accrued interest and fees, **be recovered by garnishment**. The amount to be deducted **cannot exceed 15 percent of respondent Dawn Cranmer'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)(J)
(2015).

December 6, 2016
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency

Date Mailed to Parties:

LIST OF WITNESSES:

For petitioner:

Brian Lyszkiewicz

For respondent:

Neither petitioner, Dawn Cranmer, nor any witnesses appeared on her behalf.

LIST OF EXHIBITS:

For petitioner NJHESAA:

- P-1 Affidavit of Janice Seitz, dated September 12, 2016
- P-2 Promissory note of Dawn Cranmer, executed June 2, 2006
- P-3 Claim worksheet screen, NJHESAA
- P-4 Status Monthly Repayment (first claim) screen, NJHESAA
- P-5 Repayment Schedule screen, Dawn Cranmer, NJHESAA
- P-6 Student Correspondence Screen, NJHESAA, for Dawn Cranmer
- P-7 Notice of Intent To Garnish form, NJHESAA
- P-8 Request For Hearing, Dawn Cranmer, dated July 12, 2016

For respondent Dawn Cranmer:

None