

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 1135-15

AGENCY DKT. NO. HESAA

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

Petitioner,

v.

MARY MC KINNEY,

Respondent.

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

No appearance by Mary McKinney, respondent

Record Closed: March 17, 2015

Decided: April 28, 2015

BEFORE **JOSEPH LAVERY**, ALJ t/a:

STATEMENT OF THE CASE

The **New Jersey Higher Education Student Assistance Authority (NJHESAA, the agency)**, petitioner, acting under authority of 20 U.S.C.A. § 1095a(a) and (b) and 34 C.F.R. § 682.410(b)(9)(i)(A) moves for an order of wage garnishment against respondent.

Respondent, Mary McKinney, contests this appeal by the agency.

Today's decision grants the agency's request to impose garnishment.

PROCEDURAL HISTORY

This is an appeal brought by the agency, NJHESAA, seeking authority to garnish. It was filed in the Office of Administrative Law (OAL) on January 8, 2015. The Acting Director and Chief Administrative Law Judge appointed the undersigned to hear and decide the matter on February 4, 2015. Hearing was scheduled for March 17, 2015, and convened timely. On that date the record closed.

ANALYSIS OF THE RECORD

Background:

The agency presented its case through testimony by the Agency witness, **Aurea Thomas**. She acknowledged the content of Exhibit P-1, the affidavit of Janice Seitz, Program Officer, Servicing/Collections Unit, and adopted it as her own. Ms. Thomas confirmed that she had full personal familiarity with the case.

It is clear that on August 22, 2002, respondent, Ms. McKinney, executed a Master Promissory Note for a loan in the amount of \$24,875 to pay tuition to Georgian Court University. The lender was Sallie Mae. (P-1, P-2 and P-3.) In time, respondent did not meet her repayment schedule, which triggered the lender's claim for reimbursement from NJHESAA, the legal guarantor in the amount of the existing principal and the capitalized interest accruing to date. The total sought by the lender was \$32,867. The debt was paid by NJHESAA in that amount on July 15, 2014. (P-4.) NJHESAA, now owning the debt, set a payment schedule to be followed by respondent.

By January 15, 2015, respondent had declined to submit her \$385 monthly payments for a period triggering default. (P-5.) Default as defined by rule was then in effect, and respondent was notified that garnishment would follow. (P- 6, P-7.) In reply, respondent asked for a review of her attached written statement, arguing that garnishment of 15 percent of her disposable pay would impose an extreme financial hardship. (P-8.) NJHESAA then mailed to respondent a financial statement form in answer to which she could provide data in support of her claim. (P-9.) She returned it with answering information. Unpersuaded by these numbers, NJHESAA now moves for an order to garnish.

Findings of Fact:

I **FIND** that there is no dispute over the material facts of record. The controversy involves only their implication

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).

Applying the Law to the Facts:

Under authority of the provisions of 20 U.S.C.A. Sec. 1095a(a) and (b) a hearing was held before the undersigned. During this proceeding, the agency, NJHESAA, was required to show by a preponderance of evidence: (a) that respondent here is the debtor who executed the promissory note, (b) that the debt exists in the amounts the agency has calculated, and (c) that the debtor is delinquent. This the agency has done.

The testimony of the agency's witness was credible and supported by the unchallenged proffer of Exhibits P-1 through P-10, now in evidence. There is nothing sufficient in the hearing record to challenge the agency's calculations of

the loan principal, the costs of collection, the interest accruing, or the amounts unpaid and still owing.

In answer, respondent, who now had an affirmative obligation to establish her claim through proofs, submitted financial data. This data has not adequately demonstrated through paper submissions how her income and costs correlate with extreme hardship. She has not shown how repayment would be unendurable with a repayment capped by law at 15 percent of disposable income. Further, it is axiomatic that the debt incurred must be repaid at a reasonable rate. The record here shows that no payments whatever have been submitted by respondent during the months in issue. Therefore, compelled repayment through garnishment is the unavoidable remedy for NJHESAA as holder of the note.

Conclusion:

The facts of record justify garnishment of respondent's wages in appropriate proportion.

That garnishment should be established through uniform calculation procedures in place in the agency which are consistent with congressional intent and with the agency's duties to carry out that intent pursuant to the enabling Federal Family Education Leave Program, 20 U.S.C. 1071, et seq. Against the background of the facts of this case, the agency's process of establishing repayment can include: readjustment of the present monthly schedule so as to take into account the back monies now owed, to be recovered through such regular payments necessary to effect satisfaction of the debt within the maximum years allotted by law. 20 U.S.C. 1077(a)(2)(B); 34 C.F.R. 682.200. That monthly payment schedule readjustment cannot exceed 15 percent of respondent's monthly disposable income.

DECISION

I **ORDER**, therefore, that the amount defined of record, plus accrued interest and fees to date, be recovered by garnishment. However, the amount deducted for any pay period may not exceed 15 percent of disposable pay. 20 U.S.C.A. 1095a(a)(1).

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

April 28, 2015
DATE

JOSEPH LAVERY, ALJ t/a

Dated Mailed to Agency:

Date Mailed to Parties:

LIST OF WITNESSES:

For petitioner NJHESAA:

Aurea Thomas

For respondent:

Mary McKinney, respondent, did not appear but instead submitted her case on the papers.

LIST OF EXHIBITS:

For petitioner NJHESAA:

- P-1 Affidavit of Janice Seitz, dated December 11, 2014, with copy of promissory note
- P-2 Federal Stafford Loan Master Promissory Note dated August 22, 2002, executed by Mary McKinney
- P-3 Claim Form submitted by Sallie Mae to NJHESAA regarding Mary McKinney
- P-4 Default Screen on Mary McKinney recorded by NJHESAA
- P-5 Record of non-payment: Mary McKinney
- P-6 Correspondence Screen: Mary McKinney
- P-7 Blank Notice of Intent to Garnish: NJHESAA
- P-8 Request for Hearing form from Mary McKinney, dated November 14, 2014
- P-9 Blank Financial Statement form: NJHESAA
- P-10 Financial Statement Reply: Mary McKinney

For respondent:

None