DECISION

OAL DKT. NO. HEA 1220-15

AGENCY DKT. NO. HESAA

NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY (NJHESAA),

Petitioner,

v.

ASHLEY NEPTUNE,

Respondent.

Russell P. Goldman, Esq., for petitioner

Ashley Neptune, respondent, pro se

Record Closed: March 27, 2015 Decided: May 11, 2015

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 to garnish respondent's wages.

Respondent, Ashley Neptune, opposes this action on appeal.

Today's decision grants the right to garnish the wages of respondent at a rate of no more than 15 percent of her disposable wages.

PROCEDURAL HISTORY

This matter was filed for hearing in the Office of Administrative Law (OAL) on January 8, 2015, by the agency, NJHESAA, for hearing. The Acting Director and Chief Administrative Law Judge on February 4, 2015, then ordered that this case be heard before the undersigned. Respondent, Ashley Neptune, elected to submit her case through a written statement. Hearing convened nonetheless on March 24, 2015, to allow the agency's case to be placed on record. After completion of testimony by the agency's witness, and after admission into evidence of associated exhibits, the hearing closed, but the record remained open to allow a letter-brief from the agency. It was filed on March 27, 2015. On that date the record closed.

ANALYSIS OF THE RECORD

Background:

This appeal is brought to determine the extent to which, if at all, garnishment should be imposed. Many of the material facts are not seriously in contention:

On July 18, 2007, respondent Ashley Neptune executed a promissory note with CitiBank.[1] In consideration of that note and of a promise to repay through monthly installments, the lender disbursed to her $7,500[2]. Respondent did not make the required payments, and fell into default on the loan.

The holder of the note at the time moved before NJHESAA to obtain reimbursement of principal and interest owed. As guarantor under federal law, the agency issued a check to the lender holding the note in the total amount of $1924.31.[3] To recover the monies the agency set up a monthly schedule for repayment by respondent. There were no voluntary payments on the monthly schedule after that date by respondent to the agency.[4]

With respondent now in default before the agency, the latter gave notification to respondent that it would seek garnishment to recover the monies owed.[5] In a challenge to this proposal, respondent sought a review of her case on the written record, including her statement citing mental illness. However, she did not provide associated documentary proofs of disability sought by the agency in support of that claim, beyond her written statement. With respondent's appeal in place, these proceedings followed.

[1] Exhibits P-1, P-2
[2] Exhibit P-1, P-3
[3] Exhibit P-3
[4] Exhibit P-4
[5] Exhibit P-5

Arguments of the parties:

The agency relies on the history of transactions documented in its exhibits. In the view of its witness, **Aurora Thomas**, this history discloses continuing efforts by the agency to arrive at a level of payment by respondent which would be consistent with the law and its implementing rules, yet reasonable when taking into account her financial circumstances. Ms. Thomas affirmed her full knowledge of the case, an understanding absorbed in the course of her assigned tasks with NJHESAA. She stated that the amount sought in garnishment is not arrived at casually. Staff seeks to work with debtors. Their circumstances are taken into account, and the full expertise and experience of supervisors is brought to bear during the garnishment decision process.

Here, in respondent's case, Ms. Thomas believed that garnishment of 15 percent was appropriate. Respondent had offered no proofs of illness and had not submitted any scheduled payments. Ms. Thomas added that two days prior to the instant hearing, she was assured over the phone by respondent that payment would be submitted. None had been forthcoming up to the time of the hearing.

By way of legal argument, in post-hearing letter-brief[6] the agency concedes that the law does not define when garnishment should be less than the 15 percent cap. Neither can it point to guiding case law on this point. Instead, the agency maintains that the law's implicit intent under circumstances like respondent's, as suggested by the agency's "acceleration" option, is to impose the full amount of garnishment which the Congress permits: 15 percent of disposable income.

[6] Accompanied by a copy of a Borrower's Rights and Responsibilities Statement, entered in evidence as Exhibit P-8.

The agency believes this conclusion is borne out by the Borrowers Rights and Responsibilities Statement,[7] the promissory note,[8] and the controlling rules. In addition to recovery of the principal, the rules compel capitalization of interest.[9] They also provide cancellation of debt after permanent and total disability,[10] as defined therein. The burden is on respondent to prove she is in that condition and she has failed to go forward with proofs that she is eligible for cancellation of the loan as she requests. For that reason, the full 15 percent should be garnished. There is no factual reason to do otherwise.

In answer through her written statement, **respondent Ashley Neptune** declared that during her time in school where she was studying to be a teacher, she suffered from two impulse control disorders causing noticeable physical disfigurement. These symptoms triggered shame, depression and social anxiety. Eventually, she was unable to cope with the public ridicule. She avoided leaving her house, staying home instead to take courses on the internet.

Nevertheless, respondent wrote, personal impairments brought on by her state of mind, such as inability to concentrate, to manage time efficiently or to cope with depression and anxiety, continued in endless cycle, causing her to consume exorbitant amounts of time in seeking her degree. Nevertheless, respondent believes she can attain her goals if sufficient time permits her to address her illnesses.

Meanwhile, attaching her earning statements for the past month (Exhibit P-7), respondent asks that her condition, her debt load, and the small amounts of net income available to her, serve as reason to persuade the agency to be lenient, and to “discharge” her debt.

[7] Ibid.
[8] Exhibit P-2
[9] C.F.R. 682.410(c)(4)
[10] C.F.R. 682.200

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact:

I FIND that:

1. There are no disputes of material fact concerning the existence of the debt, the amounts of principal and interest calculated by the agency as owing, or the state of delinquency in the loan.

2. Appellant has not introduced proofs beyond a mere assertion to show by a preponderance that she is permanently and totally disabled mentally.

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. 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 (b) 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, now in evidence.

The ameliorating circumstances claimed by respondent in the Request for Hearing Form to warrant "discharge" of the debt create an affirmative defense. It is respondent who therefore has the burden of persuasion to show that both facts and law stand for non-repayment, which would occur upon proof of total and permanent mental illness. Respondent has not submitted the proofs requested by the agency.

Consequently, it is a fair construction of the enabling Act and implementing rules that the agency is now entitled to be made whole. To achieve such "wholeness," repayment should be compelled through garnishment. The garnishment should go forward by adding the amounts of the unpaid principal and capitalized interest to the remaining monthly schedule of payments. These added amounts would be spread over the life of the loan to assure complete repayment of the entire loan within that number of years for which repayment was originally contracted.

Such an apportionment of payments may or may not reach the monthly cap of 15 percent of disposable wages which is suggested as most appropriate in the agency's letter-brief. That is as it may be. The decisive consideration in this case is that the agency has not pointed to a legal compulsion in law or rules to immediately move to that monthly maximum when seeking repayment. Neither is

there intent apparent in the Act or in the rules for such an automatic maximum to serve as a penalty.

ORDER

I ORDER, therefore, that the amount defined of record and sought by petitioner NJHESAA, plus accrued interest and fees, be recovered by garnishment consistent with the above reasoning. However, the monies deducted for any pay period shall be at no more than 15 percent of 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).

May 11, 2014
DATE

JOSEPH LAVERY, ALJ t/a

Date Mailed to Agency: _____

Date Mailed to Parties: _____

mph

LIST OF WITNESSES:

For petitioner NJHESAA:

Aurea Thomas

For respondent:

Ashley Neptune, respondent, rested her case on the written record.

LIST OF EXHIBITS:

For petitioner:

P-1 Affidavit of Janice Seitz, dated December 3, 2014
P-2 Federal Stafford Loan Master Promissory Note
P-3 NJHESAA default screen
P-4 Payment history screen
P-5 Form for notice of intent to garnish
P-6 Request for Hearing: Ashley Neptune, dated September 9, 2014
P-7 Earning Statements: Ashley Neptune. 30 August 2014 to 12 September 2014 and 13 September 2014 to 26 September 2014
P-8 Borrower's Rights and Responsibilities Statement

For respondent:

None