

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 01373-16

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

Petitioner,

v.

CARLAMARIA BARNES,

Respondent.

Philip Levitan, Esq., for petitioner (Fein, Such, Khan & Shepard, attorneys)

Carlamaria Barnes, pro se

Record Closed: April 28, 2016

Decided: May 27, 2016

BEFORE **BARRY E. MOSCOWITZ**, ALJ:

STATEMENT OF THE CASE

Carlamaria Barnes entered into a student loan with the New Jersey Higher Education Student Assistance Authority (NJHESAA). A debt exists in the amount of \$70,332.22 and is currently delinquent. A preponderance of the evidence does not exist that the proposed wage garnishment would cause financial hardship. Should the wage garnishment be issued? Yes. Under 34 C.F.R. § 34.14(c)(1) (2015), the debtor bears the burden of proving by a preponderance of the evidence that the garnishment would cause financial hardship.

PROCEDURAL HISTORY

On October 12, 2004, Barnes entered into a Federal Stafford Loan Master Promissory Note with JPMorgan Chase Bank to pay tuition for New Jersey City University. Barnes, however, defaulted. As a result, the NJHESAA was required to honor its guarantee of the loan.

On September 30, 2015, the NJHESAA issued a notice to Barnes that it was seeking to garnish her wages. Barnes requested a hearing. On January 21, 2016, the NJHESAA transmitted the case to the Office of Administrative Law as a contested case under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the Office of Administrative Law, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6.

On April 11, 2016, Barnes agreed to sign an agreement to pay \$100 per month for six months and to pursue a consolidation of her student loans, and the hearing was carried until April 28, 2016. On April 28, 2016, Barnes did not appear for the hearing. To date, Barnes has contacted neither the NJHESAA to explain why she did not sign the agreement nor this tribunal to explain why she did not appear for the hearing.

FINDINGS OF FACT

Based on the testimony the NJHESAA provided, and my assessment of its credibility, together with the documents the NJHESAA submitted, and my assessment of their sufficiency, I **FIND** the following as **FACT**:

On October 12, 2004, Barnes entered into a Federal Stafford Loan Master Promissory Note with JPMorgan Chase Bank (Chase) to pay tuition for New Jersey City University and Chase disbursed \$39,551 to New Jersey City University for that tuition payment. Barnes, however, defaulted. As a result, the NJHESAA was required to honor its guarantee of the loan.

At the time the NJHESAA acquired the loan, the amount due and owing was \$53,059.28. Interest, however, accrued. Collection costs were also assessed.

Barnes currently owes \$70,332.22

CONCLUSIONS OF LAW

The NJHESAA has the burden of proving the existence and amount of a debt. 34 C.F.R. § 34.14(a)(1) (2015). The NJHESAA meets this burden by including in the record, and making available to the debtor on request, records to show that the debt exists in the amount stated in the garnishment notice, and that the debt is currently delinquent. 34 C.F.R. § 34.14(a)(2) (2015). If the debtor disputes the existence or the amount of the debt, the debtor must prove by a preponderance of the credible evidence that the debtor does not owe the debt; that the amount the NJHESAA claims is owed is incorrect; or that debtor is not delinquent with payment. 34 C.F.R. § 34.14(b) (2015).

If the debtor objects that the proposed garnishment rate would cause financial hardship, the debtor bears the burden of proving by a preponderance of the credible evidence that “withholding the amount of wages proposed in the notice would leave [the debtor] unable to meet the basic living expenses of [the debtor] and [the debtor’s] dependents.” 34 C.F.R. § 34.14(c)(1) (2015).

In this case, the debtor did not appear for the hearing to object that the proposed garnishment rate would cause financial hardship.

Given my findings of fact and this discussion of the law, I **CONCLUDE** that the NJHESAA has met its burden of proving the existence of the debt and the amount of the debt owed.

In addition, I **CONCLUDE** that the NJHESAA has met this burden by including in the record, and making available to Barnes, records to show that the debt exists in the amount stated in the garnishment notice, and that the debt is currently delinquent.

Therefore, I **CONCLUDE** that an administrative wage garnishment is appropriate under the applicable statutory and regulatory scheme and that such an administrative wage garnishment should issue.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that an administrative wage garnishment be issued against Barnes directing her employer to deduct from her wages an amount equal to 10 percent of her disposable wages and to remit that amount to the NJHESAA until the loan is repaid.

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

May 27, 2016 _____

DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

May 27, 2016 _____

Date Mailed to Parties:

dr

APPENDIX

Witnesses

For Petitioner:

Auria Thomas

For Respondent:

None

Documents

For Petitioner:

P-1 Proof of Debt

For Respondent:

None