

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 02852-15

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

Petitioner,

v.

MAHENDRA BRAHMBHATT,

Respondent.

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

Mahendra Brahmbhatt, pro se

Record Closed: April 17, 2015

Decided: April 23, 2015

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

STATEMENT OF THE CASE

On January 8, 2007, Mahendra Brahmbhatt entered into a student loan with the NJHESAA. A debt exists in the amount of \$21,017.84 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), the debtor bears the burden of proving by a preponderance of the evidence that the garnishment would cause financial hardship.

PROCEDURAL HISTORY

On January 8, 2007, Mahendra entered into a NJ CLASS student loan with the NJHESAA.

On January 17, 2007, installment payments became due, but none were paid.

On December 3, 2014, the NJHESAA issued a Notice Prior to Wage Withholding to Mahendra. Under the statutory and regulatory scheme, the NJHESAA seeks an order directing Mahendra's employer to deduct from his wages and amount equal to ten percent of his disposable wages and remit that amount to the NJHESAA until the loan is repaid. The authority for this wage garnishment may be found at 20 U.S.C.A. § 1095a and 34 C.F.R. § 682.410.

Mahendra resisted the notice and requested a hearing.

On February 17, 2015, 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.

FINDINGS OF FACT

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

I.

On January 8, 2007, Mahendra's daughter, Nima Brahmhatt, entered into a NJCLASS student loan with the New Jersey NJHESAA for the purpose of paying tuition to Rutgers University Newark. The promissory note bears loan number P07500345. As a result of entering into this loan, Nima received \$13,775 for tuition.

On January 17, 2007, installment payments became due, but none were paid. Mahendra had cosigned the loan. As a result, Mahendra became obligated to pay his daughter's debt.

II.

On December 3, 2014, the NJHESAA issued a notice of Administrative Wage Garnishment to Mahendra.

Brian Lyszkiewicz, a representative from the NJHESAA, testified that all attempts to contact Nima to answer for the debt had failed and that the debt now totals \$21,017.84.

All documentation submitted to support of the existence and amount of the debt was admitted into evidence as P-1.

III.

Mahendra testified that he cannot afford to repay the loan and that the proposed wage garnishment would cause financial hardship.

All documentation submitted to support his contention that the proposed wage garnishment would cause financial hardship was admitted into evidence as R-1.

IV.

According to his Form 1040, U.S. Individual Income Tax Return, Mahendra is married, but filed separately, and claimed two sons as dependents. His total income is listed as \$76,709, and his adjusted gross income is the same. Divided by twelve, that means his monthly gross income is \$6,392.

Meanwhile, Mahendra submits that his monthly expenses total \$5,633—excluding his credit card debt. Although Mahendra submits that his credit card debt totals \$26,476, he submitted no proof how much he must pay each month to pay off th

debt. More important, he submitted no proof that this line item is a reasonable and necessary expense.

His list of monthly expenses is reproduced below:

MONTHLY EXPENSES

1.	PSE&G	322
2.	Mortgage Amount	2,922.18
3.	Toyota Financial Services (Lease Car Installment)	202
4.	Wells Fargo Dealer (Car Loan)	170
5.	Verizon Internet Service	84.99
6.	Vonage Landline	39.91
7.	Passaic Valley Water	152.84
8.	AT&T Mobility	152.47
9.	Ameriprise Auto Insurance	404.03
10.	Tri State Financial	103.35
11.	StraightTalk	48.92
12.	ACS Student Loan (Temp. Reduce Monthly Installment)	67.80
13.	AES Student Loan (Temp. Reduce Monthly Installment)	67.80
14.	U.S. Bank (Credit Card) (Unpaid)	22,035
15.	AMEX Credit Card (Unpaid)	4,441
16.	Groceries	350
17.	Gas	275
18.	Prescription Drugs	270

When subtracting his monthly expenses of \$5,633 from his monthly income of \$6,392, Mahendra is left with \$759 in disposable wages, excluding his credit card debt.

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). 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). 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).

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 you and your dependents.” 34 C.F.R. § 34.14(c)(1).

II.

The standards for proving financial hardship are contained in 34 C.F.R. § 34.24. 34 C.F.R. § 34.14(c)(2). Under that regulation, the debtor has the burden of documenting the costs incurred for basic living expenses and the income available to meet those expenses, 34 C.F.R. § 34.24(d). The costs incurred are then compared to the National Standards published by the Internal Revenue Service. 34 C.F.R. § 34.24(e)(1)-(2).

The debtor has the burden of proving that the costs incurred do not exceed the National Standards. 34 C.F.R. § 34.24(e)(3).

If a basic living expense exceeds the National Standard, then the debtor must prove that the basic living expense is reasonable and necessary. 34 C.F.R. § 34.24(e)(4).

III.Food, Clothing, and Other Items

According to the National Standards, a taxpayer is allowed the standard amount for a family of his size for food, clothing, and other items without questioning the amount he actually spends. If the amount claimed is more than the total allowed by the National Standards for food, housekeeping supplies, apparel and services, and personal care products and services, the taxpayer must provide documentation to substantiate those expenses are necessary living expenses. Since Mahendra did not substantiate that the amount he claims is more than the total allowed by the National Standards, he is only allowed the standard amount of \$1,249.

The total National Standards amounts are reproduced below:

Expense	One Person	Two Persons	Three Persons	Four Persons
Food	\$315	\$588	\$660	\$821
Housekeeping supplies	\$32	\$66	\$65	\$78
Apparel & services	\$88	\$162	\$209	\$244
Personal care products & services	\$34	\$61	\$64	\$70
Miscellaneous	\$116	\$215	\$251	\$300
Total	\$585	\$1,092	\$1,249	\$1,513

IV.Housing and Utilities

According to the National Standards, a taxpayer is allowed the standard amount, or the amount the taxpayer actually spends, on housing and utilities, whichever is less. The amount Mahendra actually spends on housing and utilities is more than the standard amount. Thus, Mahendra is allowed the standard amount or \$2,795.

The National Standards amounts are reproduced below:

Maximum Monthly Allowance

County	Housing and Utilities for a Family of 1	Housing and Utilities for a Family of 2	Housing and Utilities for a Family of 3	Housing and Utilities for a Family of 4	Housing and Utilities for a Family of 5 or more
Atlantic County	1,842	2,164	2,280	2,542	2,583
Bergen County	2,740	3,218	3,391	3,781	3,842
Burlington County	1,990	2,337	2,463	2,746	2,791
Camden County	1,849	2,171	2,288	2,551	2,592
Cape May County	1,840	2,161	2,277	2,539	2,580
Cumberland County	1,605	1,885	1,986	2,214	2,250
Essex County	2,600	3,054	3,218	3,588	3,646
Gloucester County	1,924	2,260	2,381	2,655	2,698
Hudson County	2,503	2,940	3,098	3,454	3,510
Hunterdon County	2,608	3,064	3,228	3,599	3,658

Mercer County	2,121	2,491	2,625	2,927	2,974
Middlesex County	2,258	2,652	2,795	3,116	3,167
Monmouth County	2,456	2,885	3,040	3,390	3,444
Morris County	2,637	3,097	3,263	3,639	3,697
Ocean County	1,952	2,293	2,416	2,694	2,737
Passaic County	2,489	2,924	3,081	3,435	3,491
Salem County	1,711	2,009	2,117	2,360	2,399
Somerset County	2,536	2,979	3,139	3,500	3,556
Sussex County	2,179	2,559	2,697	3,007	3,056
Union County	2,503	2,940	3,098	3,454	3,510
Warren County	2,106	2,473	2,606	2,906	2,953

V.

Transportation

The transportation standards for taxpayers with a vehicle consist of two parts: nationwide figures for monthly loan or lease payments, referred to as ownership costs, and additional amounts for monthly operating costs. The operating costs include maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking and tolls.

A.

Ownership Costs

According to the National Standards, a taxpayer is allowed the lesser of the monthly payment on two cars or the ownership costs for two cars shown in the table below. The amount Mahendra spends on his two cars is less than the ownership costs for the two cars shown in the table below. Thus, Mahendra is allowed the lesser of the two or \$372.

The National Standards amounts are reproduced below:

Ownership Costs

	One Car	Two Cars
National	\$517	\$1,034

B.

Operating Costs

According to the National Standards, a taxpayer is allowed the lesser of the amount the taxpayer actually spends monthly for operating two cars or the operating costs shown in the table below. The amount Mahendra actually spends monthly for operating his two cars is less than the operating costs shown in the table below. Thus, Mahendra is allowed the amount he actually spends monthly for operating his two cars or \$679.

The National Standards amounts are reproduced below:

Operating Costs

	One Car	Two Cars
Northeast Region	\$278	\$556
Boston	\$277	\$554
New York	\$342	\$684
Philadelphia	\$299	\$598

VI.

Out-of-Pocket health Care Expenses

The table for health care expenses, based on Medical Expenditure Panel Survey data, has been established for minimum allowances for out-of-pocket health care expenses. Out-of-pocket health care expenses include medical services, prescription drugs, and medical supplies. Elective procedures such as plastic surgery or elective dental work are generally not allowed.

According to the National Standards, a taxpayer and his or her dependents are allowed the standard amount monthly on a per person basis, without questioning the amounts they actually spend. If the amount claimed is more than the total allowed by the health care standards, the taxpayer must provide documentation to substantiate those expenses are necessary living expenses. Since Mahendra did not substantiate that the amount he claims is more than the total allowed by the National Standards, he is only allowed the standard amount of \$60.

The National Standards amounts are reproduced below:

Out-of-Pocket Costs

Out-of-Pocket Costs	
Under 65	\$60
65 and Older	\$144

VII.

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 Mahendra, records to show the debt exists in the amount stated in the garnishment notice, and that the debt is currently delinquent.

Moreover, I **CONCLUDE** that Mahendra has not proven by a preponderance of the credible evidence that the costs he incurs for basic living expenses, which exceed the National Standards, are reasonable and necessary, so he may claim a financial hardship. To repeat, when subtracting his monthly expenses of \$5,633 from his monthly income of \$6,392, Mahendra is left with \$759 in disposable wages. But when the monthly expenses are calculated according to the National Standards, they total \$5,155, which leaves Mahendra with \$1,237 in disposable wages.

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—whether calculating the monthly expenses according to the calculations Mahendra submitted or the National Standards the Internal Revenue Service published.

ORDER

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

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

April 23, 2015

DATE

BARRY E. MOSCOWITZ, ALJ

Date Received at Agency:

April 23, 2015

Date Mailed to Parties:

dr

APPENDIX

Witnesses

For Petitioner:

Brian Lyszkiewicz

For Respondent:

Mahendra Brahmbhatt

Documents

For Petitioner:

P-1 Proof of Debt

For Respondent:

R-1 Proof of Expenses