

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 02963-16

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

Petitioner,

v.

DEBORAH KRETSCHMER,

Respondent.

Phillip Levitan, Esq., appearing for petitioner (Fein, Such, Khan & Sheppard)

Deborah Kretschmer, pro se,

Record Closed: March 18, 2016

Decided: March 22, 2016

BEFORE **KIMBERLY A. MOSS**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Respondent, Deborah Kretschmer (Kretschmer or respondent), applied for and was granted a student loan for purposes of paying tuition to Ramapo College. She failed to make the proper installment payments when they became due and defaulted. Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA) was the guarantor of the loan and subsequently purchased it from the lender. NJHESAA seeks an order directing the employer of Kretschmer to deduct from her wages, an amount equal to fifteen percent of her disposable wages and to remit this amount to petitioner until such time as respondent's student loan has been repaid. See

20 U.S.C. 1095a (2003), 34 C.F.R. 682.410(b)(9) (2003), N.J.S.A. 18A:72-1to21, N.J.A.C. 9A:10-1.4.

Respondent acknowledges acquiring the loan and failing to make payments as required. However she asserts that the garnishment of fifteen percent of her wages would be a hardship and that she does not owe the full amount of the debt.

On or about October 28, 2015, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed a timely appeal to the Notice of Administrative Wage Garnishment. The matter was transmitted to the Office of Administrative Law on February 23, 2016. Respondent requested a telephone hearing. The hearing was held on March 16, 2016. Respondent supplied additional document on March 18, 2016. Upon receipt of the documents from respondent, I closed the record.

FINDINGS OF FACT

Based upon the affidavit of Janice Seitz, Program Officer with the NJHESAA and the enclosures submitted therewith—that is, a copy of the loan application executed by petitioner, a copy of the voluntary monthly repayment arrangement, Respondents list of income and expenses and the computer information documenting the loan history, including interest accrued, the testimony of Brian Lyszkiewicz, Investigator with NJHESAA and Kretschmer, I make the following **FINDINGS OF FACT:**

1. On or about March 4, 1996, respondent executed an application/ promissory note for a guaranteed student loan for the purpose of paying tuition to Ramapo College. Sallie Mae in reliance upon the application promissory note paid the sum of \$12,237.63.
2. Pursuant to the terms of the promissory note payments became due and owing there under.

3. Respondent defaulted on the aforesaid student loans by failing to make the required payments.
4. Petitioner is the state agency in New Jersey designated as a guarantor agency for federal and state funded student loans.
5. As a result of the default of respondent, petitioner was required to honor its guarantee.
6. At the time petitioner acquired the loan(s), the amount of \$15,500.52 was due and owing.
7. Pursuant to the terms of the loan, interest has continued to accrue.
8. On or about October 28, 2015, petitioner, acting pursuant to 20 U.S.C.A. 1095(a) et seq. and 34 C.F.R. 682.410(9), issued a Notice of Administrative Wage Garnishment directing that fifteen percent of respondent's disposable wages be remitted to petitioner until such time as the respondent's student loans have been repaid.
9. Respondent filed a timely appeal of NJHESAA's Notice of Administrative Wage Garnishment.
10. The amount of \$ \$20,432.70 is presently due and owing.
11. Respondent lives with her daughter. Her gross monthly salary is \$3,619.
12. Respondent receives child support in the amount of \$519.46 per month.
13. Respondent's total monthly income is \$4,138.94.
14. Respondent's monthly rent payment is \$1,350

15. Respondent listed the following monthly expenses: car loan \$365, car Insurance \$100, gas 37.50, water \$17.11 and child care \$300. Respondent has out of pocket medical expenses in the amount of \$237.46
16. Respondent did not provide any documentation that she does not owe the full amount of the outstanding loan.
17. The National Standards published by the Internal Revenue Service under 26 U.S.C. 7122(c) 2 for two people for: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$1,092.
18. The National Standards for car ownership is \$517.
19. The Local Standard for operation of a car is \$342
20. The Local Standard for housing and utilities in Sussex County, New Jersey for one person is \$ 2,559.
21. The National Standard for out of pocket health care for people under sixty-five years old is \$60 per person for a total in this matter of \$120.
22. Petitioner has an outstanding balance with Credit One Bank in the amount of \$1,510.81
23. Petitioner has an outstanding cable TV bill with Service Electric Broadband in the amount of \$950.

LEGAL ANALYSIS AND CONCLUSIONS

NJHESAA is a state-designated agency responsible for administration of the loan guarantee program for federal and state funded student loans. N.J.S.A. 18A:72-1 to 21; N.J.A.C. 9A:10-1.4. After purchasing an overdue loan from a lender, NJHESAA may collect the debt by appropriate means, including garnishment of wages. The debtor is

entitled to request an administrative hearing before an independent hearing officer prior to issuance of a garnishment order. 20 U.S.C.A. 1095(a). Federal regulations allow the borrower to dispute the existence or amount of the loan, 34 C.F.R. 34.14(b), to demonstrate financial hardship, 34 C.F.R. 34.14(c), or to raise various defenses based on discharge of the underlying debt, 34 C.F.R. 682.402.

A guaranty agency “may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement,” provided, however, that the individual be granted an opportunity for a hearing conducted by an independent hearing official such as an Administrative Law Judge. 20 U.S.C.A. 1095a (a) (5). A guaranty agency is a nonprofit organization or state agency, such as NJHESAA, that “has an agreement with the United States Secretary of the Department of Education to administer a loan guarantee program[.]” N.J.A.C. 9A:10-1.3(a). New Jersey statutes and regulations require the NJHESAA to purchase certain defaulted student loans and permit NJHESAA to seek garnishment of wages as one method of repayment. N.J.S.A. 18A:71C-6; N.J.S.A. 18A:72-16; N.J.A.C. 9A:10-1.14.

When a lender submits a claim for purchase by NJHESAA of a defaulted loan, NJHESAA first determines the legitimacy of the claim for purchase by NJHESAA of a defaulted loan and ensures that all federal and state requirements for default aversion have been followed. If NJHESAA determines that “due diligence” has been met and purchases the loan from the lender, NJHESAA then seeks to collect on the debt. N.J.A.C. 9A:10-1.4(b) (7) & (8); N.J.A.C. 9A:10-1.14(b).

Initially, NJHESAA bears the burden of proving by a preponderance of the competent, relevant and credible evidence the existence and amount of the debt. 34 C.F.R. §34.14(c) and (d); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). Here, NJHESAA produced adequate documentation establishing the existence of the debt and the amount currently in default. Since petitioner has sustained its burden of proof, respondent must demonstrate, by a preponderance of the

evidence that either the debt does not exist, the amount is incorrect or that the loan should be discharged. 34 C.F.R. 34.14. Kretschmer seeks to avoid collection by pleading financial hardship and stating that she does not owe the full amount of the debt. I **CONCLUDE** that respondent did not provide any evidence that she does not owe the full amount of the debt listed by petitioner.

In order to show financial hardship, Kretschmer must prove by a preponderance of credible evidence the amount of the costs incurred for her basic living expenses exceed the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d).

Since petitioner has sustained its burden of proof, respondent must demonstrate, by a preponderance of the evidence that either the debt does not exist, the amount is incorrect or that the loan should be discharged. 34 C.F.R. 34.14.

In this matter the National Standards published by the Internal Revenue Service under 26 U.S.C. 7122(c) 2 for two people for: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$1,092. Respondent's monthly rent is \$1,350 and her monthly utility cost is \$54.81. Her total monthly mortgage and utilities expense is \$1,404.81, which is lower than the Local Standards for housing and utilities in Sussex County New Jersey which is \$2,179. Respondent monthly car payments are \$365, which is lower than the National Standard for car ownership which is \$517. Respondent listed monthly car insurance costs of \$100, which is lower than the Local Standards for operation of a car in Sussex County of \$342. Respondent list medical out of pocket costs in the amount of \$237.46, which is greater than the National Standard for out of pocket health care for two people of \$120. She pays \$300 in monthly child care costs. Respondent's monthly income is \$4,138.94. Respondent's monthly expenses are \$3,498.81. Her monthly income exceeds her expenses by \$640.13.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has proven the existence and the amount of the claimed

debt, and that repayment thereof is in default. I further **CONCLUDE** that respondent failed to prove her claim of extreme financial hardship because her income is \$640.14 more than her expenses.

ORDER

Based upon all of the foregoing, it is **ORDERED** that the total amount due and owing by respondent shall be the subject of a wage garnishment in an amount not to exceed 15% of respondent's disposable wages.

This decision is final pursuant to N.J.A.C. 17:25-1.7 and 34 C.F.R. §682.410(b) (9) (N) (2003).

March 22, 2016

DATE
ljb

KIMBERLY A. MOSS, ALJ

WITNESSES

For Petitioner

Brian Lyszkiewicz

For Respondent

None

EXHIBITS

For Petitioner

P-1 Agency Packet

For Respondent

R-1 Bills, Expenses and Income information from Respondent.