

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

OAL DKT. NO. HEA 04728-18

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

Petitioner,

v.

**ROBERT JANMAAT,**

Respondent.

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**Courtney Davis**, Esq., for petitioner (Schachter Portnoy, attorneys)

**Robert Janmaat**, appearing pro se

Record Closed: April 3, 2018

Decided: July 23, 2018

BEFORE **GAIL M. COOKSON**, ALJ:

**STATEMENT OF THE CASE**

Robert Janmaat (respondent) appeals the Notice of Administrative Wage Garnishment served upon him by the New Jersey Higher Education Student Assistance Authority (NJHESAA) for repayment of a certain State guaranteed student loan. The underlying consolidated guaranteed student loan was in the amount of \$7,569.98, paid by Sallie Mae to unknown creditors on his behalf on or about March 1, 2005. NJHESAA acquired the loan from the bank or its successors pursuant to its guarantee against respondent's default, which had occurred on or about March 19, 2015, through payment of \$4,182.64. On or about January 9, 2018, NJHESAA allegedly served its Notice Prior to Wage Withholding upon respondent but included only a blank form for such proceeding.

By his Request for Hearing completed on or about January 10, 2018, respondent requested a hearing through written statement and stated that the requested 15% wage garnishment would result in extreme financial hardship, and that the amount of debt was in dispute. NJHESAA filed respondent's Request for Hearing with its own documents under the Affidavit of Janice Seitz, its Program Officer. The matter was transmitted to the Office of Administrative Law (OAL) on April 3, 2018, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15. On April 6, 2018, the case was assigned to the undersigned. By his Request for Hearing, respondent consented to determination of this matter by the OAL on the papers and waived an in-person or telephonic hearing.

### **FINDINGS OF FACT**

Based upon the papers and documentary evidence submitted, I **FIND** the following **FACTS**:

1. A consolidated guaranteed student loan in the amount of \$7,569.98, paid by Sallie Mae to unknown creditors on his behalf on or about March 1, 2005, at 4.25% fixed interest rate.

2. On or about February 17, 2015, Navient-Deutsche, a lender located in Wilkes-Barre, Pennsylvania, apparently claimed that respondent had defaulted on the loan. It sets forth on its Federal Family Education Loan Program Claim Form that respondent had repaid \$3,537.38 in principal. With capitalized interest of \$107.14, Navient claimed that its outstanding principal amount was \$4,139.74.

3. NJHESAA "Pursuit Activity File," which appears to be a case log, indicates that it received "due diligence" from lender on or about February 23, 2015, but not lender's collection efforts.

4. NJHESAA included a computer screen printout with this Petition, dated March 19, 2018. It appears to set forth that since it assumed the balance of \$4,139.74, respondent had paid \$1,295.29 against principal; \$339.26 against interest; and \$371.45

against collection costs. The screenshot lists the collection costs as \$1,097.42, and interest through March 19, 2018, as \$434.54 plus \$42.90. Accordingly, it appears that the outstanding balance according to these screenshots was \$3,708.60 as of March 19, 2018. These amounts do not correspond, however, to an untitled document of payments listed since April 1, 2015.

5. Seitz's certification contains no jurisdictional facts; no proof of service; no facts relating to the educational institution(s) to which these loans were disbursed; and no amount even due and payable.

6. On or about January 9, 2018, NJHESAA allegedly served its Notice Prior to Wage Withholding upon respondent but only a blank form was included with the transmittal package to the OAL. There was also no proof of service, although respondent did fill out the Request for Hearing on or about January 10, 2018.

7. Respondent asserted in his hearing request that he has monthly gross income of \$3,600 but household expenses of \$3680.

8. Respondent also asserted, with a supporting spreadsheet, that he has approximated his current outstanding loan balance as \$839.75, having made payments totaling \$7,059.35 against the starting balance of \$7,569.98. NJHESAA did not respond to his defenses nor provide any alternative accounting.

9. Respondent lives and works in New York.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The student loans at issue herein are part of the Federal Family Education Loan (FFEL) Program, 34 C.F.R. Part 682. As explained in the State regulations, this Program is a Federal-State-private sector coordinated effort to make higher education assistance available to deserving college students:

“Federal Family Education Loan Program” or “FFELP” means the collective term for the Stafford Loan Program (both interest subsidized and unsubsidized), the

Supplemental Loan for Students or SLS Program, the Parent Loan for Undergraduate Students or PLUS Program, and the Consolidation Loan Program. The FFELP is a Federal-State-private sector partnership. Financial institutions make FFELP loans with private capital, State-designated guaranty agencies such as the Authority provide first-line insurance (guarantees for the loans), and the Federal government, through the Federal Department of Education, provides subsidies for student borrowers along with backstop reinsurance and general program oversight and regulation.

[N.J.A.C. 17:25-1.2.]

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). NJHESAA is the State-designated guaranty agency responsible for administration of the FFEL loan guarantee program for federal and state-funded student loans in New Jersey. N.J.S.A. 18A:71C-1 to -20; N.J.A.C. 9A:10-1.4. When a lender submits a claim for purchase by NJHESAA of a defaulted loan, NJHESAA must first determine the legitimacy of the claim for purchase by it of a defaulted loan and ensure that all federal and State requirements for default aversion have been followed. If NJHESAA determines that “due diligence” has been met, NJHESAA then may purchase the loan from the lender. After purchasing an overdue loan from a lender, NJHESAA may collect the debt by appropriate means, including garnishment of wages. N.J.A.C. 9A:10-1.14.

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. § 1095a. Federal regulations, incorporated by reference in the State 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. The loans at issue in this matter are consolidated loans of unknown origin.

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(a) (2007); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). Here, I **CONCLUDE** that NJHESAA did not produce adequate documentation establishing the relevant facts about the original debt, the consolidated debt, or the basis of this forum assuming jurisdiction over this wage garnishment application.

Even if NJHESAA had sustained its burden of proof, respondent must be given the opportunity also to demonstrate, by a preponderance of the evidence, that the wage garnishment would be a financial hardship. 34 C.F.R. § 34.14 (2007). I **CONCLUDE** that petitioner has failed to respond to respondent's reasonable demand for an accounting, as well as consideration of his defense of financial hardship to the wage garnishment petition and that garnishment of 15% of his disposable wages would create an extreme financial hardship.

In sum, and based on the facts presented, I **CONCLUDE** that petitioner has not proven the jurisdictional basis of seeking a wage garnishment order from this New Jersey forum, nor has it adequately demonstrated the factual predicate to such a request or why respondent's claim of financial hardship is unwarranted.

### **ORDER**

Based upon all of the foregoing, it is **ORDERED** that the application of NJHESAA for an order mandating a garnishment against Respondent Robert Janmaat's earned income is **DENIED** without prejudice to refiling.

This decision is final pursuant to 34 C.F.R. § 682.410(b)(9)(i)(J) (2017).

July 23, 2018

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DATE

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GAIL M. COOKSON, ALJ

Date Received at Agency

7/23/18

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Date Mailed to Parties:

id

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