

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 4871-18

AGENCY NO. HESAA

**NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY**

Petitioner,

v.

ERIC PEPPER,

Respondent.

Russell P. Goldman, Esq., for petitioner

Eric Pepper, respondent, pro se, appearing via telephone from remote location

Record Closed: May 22, 2018

Decided: June 6, 2018

BEFORE **EDWARD J. DELANOY, JR.**, ALAJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The **New Jersey Higher Education Student Assistance Authority (NJHESAA, the agency)**, **petitioner**, acting under authority of 20 U.S.C.A. § 1095a(a) and 34 C.F.R. § 682.410(b)(9)(i)(A) moves for an order of wage garnishment against respondent.

Respondent, Eric Pepper, contests this appeal by the agency.

Today's decision grants the agency's petition to impose garnishment.

This is an appeal brought by the agency, NJHESAA, seeking to garnish the wages of respondent. It was filed in the Office of Administrative Law (OAL) on April 3, 2018. Respondent Pepper challenges the proposed garnishment. Hearing convened on May 22, 2018, and the record closed on that date.

ANALYSIS OF THE RECORD

Background:

The agency presented its factual case through its witness, **Aurea Thomas**, Senior Investigator in the Servicing/Collections Unit, NJHESAA, accompanied by exhibits, none of which was contested.

Ms. Thomas stated that she was familiar with all the books and records involved in this case, and she was familiar with the facts as set forth in the affidavit of her supervisor, Janice Seitz. (P-2.) The history of events are as follows:

On November 29, 1994, respondent Pepper executed an application/promissory note for a guaranteed student loan for the purpose of consolidation, obligating him to the lender according to a set schedule for payments. As a result thereof, Sallie Mae disbursed the sum of \$8,930. (Exhibit A to Seitz affidavit.) Pursuant to the terms of the promissory/installment note(s), payments became due and owing thereunder on or about March 20, 1995. Respondent defaulted on the aforesaid student loans by failing to make the payments required. As a result of the aforesaid default, the NJHESAA was required to honor its guarantee. At the time NJHESAA acquired said loans, the amount of \$8,777.41 was due and owing. Interest continued to accrue pursuant to the promissory note. On or about November 14, 2017, NJHESAA, 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 to respondent. The respondent timely filed this appeal of NJHESAA's notice.

Pursuant to the aforesaid statute and regulations, NJHESAA seeks an order directing respondent's employer to deduct from the wages of the respondent, an amount equal to 15 percent of the respondent's disposable wages and remit the same to the NJHESAA until such time as the respondent's student loans have been repaid. These proceedings followed.

Ms. Thomas testified that respondent defaulted on July 18, 2012. He has made no payments since that time. Interest continues to accrue, and collection costs are due. Respondent answered in his Notice for Hearing by claiming a 15 percent garnishment would result in a hardship for him. (P-1.) He submitted a financial statement reflecting that he is currently employed. (P-3.) There is currently the sum of \$16,643.13 due on the loan. (P-4.)

The agency, relying on the testimony of its official, now moves for an order of garnishment in the amount of 15 percent of expendable wages. It notes that, despite respondent's defense of hardship, he nonetheless is working as the record discloses. (P-3.)

Eric Pepper testified via telephone that he has been disabled since 2008. At that time, he was homeless, had no income, was on Medicaid and food stamps, while living in Connecticut. He was also hospitalized for a variety of medical issues. His doctors sent letters to Sallie Mae requesting his discharge from the loan because he could not work. He pursued Supplemental Security Income (SSI) for five years, but eventually was denied. He was unable to file an appeal from that denial. In December 2014, respondent was hospitalized for the final time, after which he moved to Las Vegas. He tried to work full-time but his health would not permit such work. He then took work as a temporary employee as a tournament dealer at the casino. His work is dependent on the flow of business, and if there are no customers, he does not receive any shift work. He works two to three days a week but sometimes he does not work at all during the week. He does not have health insurance and he needs pain medication to work his temporary hours. The pain management costs between \$500 to \$700 a

month, but he is bedridden without the pain medication. A 15 percent garnishment would not allow him to pay his medical bills and then he would be unable to work.

He was also involved in a motorcycle accident in 2016 which caused him to lose four months of work because of medical issues. The summer months are the busiest months, and he relies on the income made in the summer to get him through to the following summer. He cannot work forty hours a week because of his medical issues.

Findings of Fact:

I **FIND** that no specific material facts introduced in evidence are in dispute, only their legal import is contested.

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:

The agency has carried its burden of persuasion:

Under authority of the provisions of 20 U.S.C.A. § 1095a(a) 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 (c) that the debtor is delinquent. This the agency has done.

In reply, respondent has not carried his burden of affirmatively demonstrating by a preponderance of evidence that he is entitled to consideration by reason of financial hardship. Respondent was denied SSI and therefore was deemed able to work. He has not been deemed unable to work. Because he is employed, he is not deemed totally disabled. The uncontested evidence recording employment is to the contrary. Respondent has not attempted to make any repayment on his loan in nearly six years, yet he makes payment monthly to other creditors. (P-3.) No documentation was produced by respondent to support his claimed monthly bills, or to support his claim of \$500 to \$700 a month for pain management. Respondent has not provided credible documentation to show that, should the garnishment be put into place, respondent would be unable to meet his basic living expenses. Respondent has not carried his burden of affirmatively demonstrating by a preponderance of evidence that the amount heretofore garnished is an unsustainable financial hardship. Respondent has failed in his obligation to attempt to repay his loan, and I **CONCLUDE** that he has not proven that such an extreme financial hardship exists which would preclude the imposition of a 15 percent wage garnishment.

Therefore, the agency, NJHESAA, should now be authorized to impose garnishment at the rate of 15 percent of disposable wages sought.

DECISION

I ORDER, therefore, for the reasons stated above, that the total amount owed and defined of record, plus accrued interest and fees **be recovered by garnishment**. The amount to be deducted is **15 percent of respondent Eric Pepper's disposable income**. 20 U.S.C.A. 1095(a)(1).

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

June 6, 2018

DATE

EDWARD J. DELANOY, JR., ALAJ

Date Received at Agency _____

Date Mailed to Parties: _____

mph

WITNESSES:

For petitioner:

Aurea Thomas, Investigator

For respondent:

Eric Pepper

EXHIBITS:

For petitioner:

- P-1 Request for Hearing
- P-2 Affidavit of Janice Seitz
- P-3 Default Claim
- P-4 Monthly Repayment Status

For respondent:

None