

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 8884-16
AGENCY DKT. NO. HESAA

**NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY
(NJHESAA; THE AGENCY),**

Petitioner,

v.

VIRGINIA REIGHN,

Respondent.

Kortney Swanson-Davis, Esq., for petitioner (Schachter Portnoy, LLC,
attorneys)

Virginia Reighn, respondent, pro se

Record Closed: October 25, 2016

Decided: November 29, 2016

BEFORE **JOSEPH LAVERY**, ALJ t/a:

STATEMENT OF THE CASE

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

Respondent, Virginia Reign, contested this appeal by the agency, on the written record.

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

PROCEDURAL HISTORY

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 June 14, 2016. Respondent Reign contests that request. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on June 29, 2016, to hear and decide the matter, the hearing of which was scheduled for, and convened on August 2, 2016. Rather than appear personally on August 2, respondent Reign elected to rely on her written statement. Therefore, on that date, the record closed. It was reopened by the administrative law judge by letter of September 12, 2016, to allow further hearing and admission of evidence (Exhibit P-9). Hearing was again convened and concluded finally on October 25, 2016. On that date, the record closed.

ANALYSIS OF THE RECORD

Background:

The agency presented its case first through the testimony of its witnesses, **Aurea Thomas**, Sr. Investigator, NJHESAA, and **Brian Lyszkiewicz**. Their testimony was supplemented by Exhibits P-1 through P-9.

Ms. Thomas and Mr. Lyszkiewicz testified that they were familiar with all books and records in the agency which were related to this case. They also adopted as their own the full certification of Janice Seitz, Program Officer, NJHESAA, made on May 20, 2016 (ExhibitP-1).

From the record introduced, it is apparent and uncontested that respondent Reign signed those promissory notes memorialized and described in Exhibits P-1 and P-2(a) and (b). The record of disbursements, interest and collection costs is likewise not in dispute (Exhibit P-3), and neither is the supplementation of tuition recorded in the normal course on agency records (Exhibit P-9).

No proofs have been introduced by respondent to verify her affirmative defense that she either lacked a high school diploma or that the institution failed to properly test her ability to benefit from its program (Exhibits P-7, P-8(b)).

Findings of Fact:

I FIND that no material facts of record proffered by either side 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).

The agency's obligation:

Under authority of the provisions of 20 U.S.C.A. Sec. 1095(a) and (b) 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 through the testimony of its witnesses, Ms. Thomas and Mr. Lyszkiewicz, and through its Exhibits, P-1 through P-9.

However, prompted by closer inquiry from this tribunal, the agency was obliged further¹ to explain the disparity in amounts borrowed and amounts sought now by the agency in repayment. To do so, the agency pointed to Exhibit P-9, buttressed by the live testimony of Brian Lyszkiewicz. Afterward, it contended the full record confirms that, though the principal amounts in the promissory notes executed (Exhibits P-2(a) and P-2 (b)), are less than the total amount whose return was ultimately sought by NJHESAA, the agency's higher figure reflects later payments to the institution which respondent attended. Mr. Lyszkiewicz explained credibly that these later payouts without benefit of promissory notes are the standard and usual practice of the agency: He maintained that this disbursement simply supplements payment to the school as needed when the promissory notes do not cover a borrower's costs. It is a convenience for students. Respondent did not contest this description.

The full presentation of the agency was believable and preponderates in evidence, having been left unchallenged by respondent. There is no evidence of record that respondent contests the loan amount. The agency had sent her a financial statement form to supplement its information at the time of appeal. The form was not returned (Exhibit P-8). Mr. Lyszkiewicz stated that without this additional information it cannot ask for less than garnishment of 15 percent of disposable wages. It has no updated data to do otherwise, as it regularly does, through application of the National Guidelines which it normally employs.

Based on the foregoing, the evidence preponderates that the agency's obligation to prove the loan and its accuracy has been satisfied (Exhibits P-1 through P-9).

¹ See, letter of the administrative law judge to the parties dated September 12, 2016.

Respondent's obligation:

With NJHESAA having carried its burden of persuasion, the duty to provide countering evidence therefore shifts. Respondent Reign is obliged to show through preponderating evidence that the loan should be discharged. This is the affirmative defense she raised (Exhibit P-7), and that is what she must prove. She has not succeeded. It is notable that to assist in her effort, the agency sent her the form: Loan Discharge Application: False Certification (Ability to Benefit) (Exhibit P-8(b)). This form solicits information relevant to respondent's claim in her Request for Hearing form, at page 2 (Exhibit P-7). The checked defense states:

I did not have a high school diploma or GED when I enrolled at the school I attended when receiving this loan, and I believe the school did not properly test my ability to benefit from the program. I request an application for discharge of my loan for this reason.

Respondent did not return the form. Neither did she otherwise provide any testimony to support her position. Consequently, she has not carried her evidentiary burden.

Conclusion:

It is plain that (a) the terms of the promissory notes, the authenticity or accuracy of which are not in dispute, (b) the financial figures stated as the amount owed, and (c) the enabling legislation (the Act) administered by NJHESAA, all compel the agency's exercise of its authority to recover her expended funds through garnishment. Respondent has not shown lawful cause otherwise.

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

DECISION

I ORDER 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 Virginia Reign's disposable wages**. 20 U.S.C.A. 1095(a)(1).

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

November 29, 2016
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency _____

Date Mailed to Parties: _____

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LIST OF WITNESSES:

For petitioner:

Aurea Thomas
Brian Lyszkiewicz

For respondent:

None. Respondent Reign elected to have her case decided on the existing written record (Exhibit P-7).

LIST OF EXHIBITS:

For petitioner NJHESAA:

- P-1 Affidavit of Janice Seitz, Program Officer, NJHESAA, with attachments
- P-2(a) Promissory note, Virginia Reign, June 24, 1993
- P-2(b) Promissory note, Virginia Reign, July 12, 2002
- P-3 Default screen, Virginia A. Reign, October 24, 2016
- P-4 Payment history; Virginia A. Reign
- P-5 Correspondence record; Virginia A. Reign
- P-6 Notice of Intent to Garnish; form letter
- P-7 Request for hearing; Virginia Reign, dated April 12, 2016
- P-8(a) Financial Statement form
- P-8(b) Loan Discharge Application: False Certification (Ability to Benefit).
- P-9 NJHESAA Financial Statement Screen copy

For respondent:

None