

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 08941-16

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

Petitioner,

v.

NICKETA DOUGLAS,

Respondent.

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

No Appearance by respondent

Record Closed: July 22, 2016

Decided: July 26, 2016

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, New Jersey Higher Education Student Assistance Authority (HESAA or Authority), proposes to garnish up to 15% of the wages of respondent, Nicketa Douglas, because respondent defaulted on higher education student loan repayments. HESAA issued a Notice of Wage Garnishment on September 30, 2015. Respondent filed a Request for Hearing, dated February 10, 2016, alleging a representative of Rider University signed her name, without her permission, on the loan application and promissory note; that she did not owe the full amount as she repaid some or all of the loan; and, a garnishment of fifteen percent would result in extreme financial hardship.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on June 14, 2016, as a contested case, and a hearing was scheduled for July 22, 2016.

The hearing was held on July 22, 2016, at which time the record was closed. The hearing proceeded as a default hearing as respondent failed to appear.

ISSUE

The issue is whether the Authority has a basis to garnish petitioner's wages due to an asserted default in repayment of student loans.

LEGAL BACKGROUND

The Authority is a New Jersey State agency that administers and guarantees Federal and State funded student loans. N.J.S.A. 18A:72-1 - 21; N.J.A.C. 9A:10-1.4. It purchases loans on which student borrowers have defaulted and pursues various remedies to collect the debts including wage garnishment up to 15% of the debtor's wages. 20 U.S.C. §1095(a). The debtor must be afforded an opportunity to contest the garnishment and be heard before an independent hearing officer, such as an Administrative Law Judge. Ibid.

Debt collection is subject to Federal regulation. The Authority bears the burden of proving the existence and amount of the debt after which the burden shifts to the debtor to establish grounds to discharge the loan debt or to postpone wage garnishment.

FINDINGS OF FACT

Based on the affidavit of Janice Seitz of HESAA, and testimony of Brian Lyszkiewicz of HESAA, I **FIND** the following are the **FACTS**:

1. On or about October 13, 2000, respondent executed a Master Promissory Note for a guaranteed student loan for the purpose of paying tuition to Rider University. As a result thereof, CitiBank disbursed the sum of \$21,972.00 to Rider University on behalf of respondent. (P-1)
2. Under the terms of the promissory/installment notes signed by respondent, payments became due and owing on the guaranteed student loans.
3. Respondent failed to make the payments as required and has defaulted.
4. As a result of the default, HESAA was required to honor its guaranty and purchase the note upon which respondent is in default.
5. At the time the HESAA acquired the note, \$29,472.91 was due and owing. (P-1)
6. Interest continued to accrue under the notes and collection costs have been assessed against petitioner under authority of 34 CFR §682.410(b)(2).
7. On or about January 27, 2016, the HESAA issued a Notice of Administrative Wage Garnishment to petitioner under authority of 20 U.S.C.A. §1095(a), et seq., and 34 CFR § 682.410(9). (P-1)
8. As of July 22, 2016, the sum of \$36,278.96 is due and owing. Interest thereon continues to accrue.
9. In response to respondent's assertion, in the Request for Hearing, that a representative of Rider University signed her name without permission, HESSA sent respondent a false certification form. Said form was never returned.

ANALYSIS

Pursuant to federal law a guaranty agency, such as HESAA, may garnish the disposable pay of an individual to collect the amount owed by that individual for the repayment of a student loan for higher education expenses, if he or she is not currently making the required repayment. 20 U.S.C.A. 1095a (a).

The amount deducted may not exceed fifteen percent of disposable pay. 20 U.S.C.A. 1095a (a)1.

In order to impose an administrative garnishment, a guaranty agency must present records which show that the debt exists in the amount stated in the garnishment notice and that the debt is delinquent. 34 CFR 34.14(a). Once HESAA meets that burden, and if the debtor disputes the existence or the amount of the debt, he must prove by a preponderance of the credible evidence that no debt exists, that the amount claimed is incorrect or that he is not delinquent with respect to the debt. 34 CFR 34.14(b). In addition, if the debtor claims hardship he must show by credible evidence what that hardship is with respect to repayment of the note.

In this case, HESAA presented records, which show that the debt exists in the stated amount and that it is delinquent. HESAA carried its burden of proof under 34 CFR 34.14(a). I **FIND** respondent borrowed the sum asserted by HESAA and that she defaulted in the repayment of the same.

CONCLUSION

Accordingly, it is **ORDERED** that an administrative wage garnishment be issued immediately, directing respondent's employer to deduct from respondent's wages an amount equal to 15% of respondent's disposable pay and remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as the outstanding debt resulting from the student loan has been repaid, including accrued interest and costs.

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

July 26, 2016

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

Db

APPENDIX

List of Witnesses

For Petitioner:

Brian Lyszkiewicz for NJHESAA

For Respondent:

None

List of Exhibits

For Petitioner:

P-1 Affidavit of Janice Seitz with attachments

For Respondent:

None