

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

**FINAL DECISION**

OAL DKT. NO. HEA 9892-17  
AGENCY DKT. NO. HESAA

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

Petitioner,

v.

**TIMOTHY EPIFAN,**

Respondent.

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**Richard W. Krieg, Esq.,** for petitioner (Law Offices of Richard W. Krieg,  
attorney)

**No appearance by Timothy Epifan,** respondent, pro se

Record Closed: October 31, 2017

Decided: December 1, 2017

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, Timothy Epifan**, contests this appeal by the agency.

**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 July 13, 2017. Respondent Epifan challenges the proposed garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on July 26, 2017, to hear and decide the matter. Hearing convened on September 12, 2017, but the record remained open to receive a copy of Exhibit P-7, a record of employment date-stamped as received in the OAL on October 31, 2017. The record closed on that date.

### **ANALYSIS OF THE RECORD**

#### **Background:**

The agency presented its factual case through its witness, **Aurea Thomas**, Sr. Investigator, 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. She described the history of events as follows:

On September 5, 2006, respondent Timothy Epifan executed a Federal Stafford Loan Promissory Note (Exhibit P-2, at 1), obligating him to the lender according to a set schedule for payments. Respondent did not comply, thereby eventually placing himself in default. The lender sought reimbursement from petitioner, NJHESAA, the statutory guarantor. (Exhibit P-2, at 2-3.) The debt was paid to the lender in the amount of \$5,266.41 (Exhibit P-2, at 4), and the agency acquired the loan along with the accompanying collection responsibility. It set a schedule and amount per month for repayment (Exhibit P-4), but respondent did not comply. A notice of intent to garnish followed (Exhibit P-5, at 2) and respondent submitted a request for hearing. (Exhibit P-1.) These proceedings followed.

Ms. Thomas testified that the agency had sought to ascertain whether respondent was permanently and totally disabled. It tried unsuccessfully to reach him and obtain financial information. Further, the agency placed the case on hold for six months to allow respondent's interaction with "NelNet" through the United States Department of Education. That entity, which was authorized to evaluate total and permanent disability, eventually denied approval to discharge the loan.

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 permanent and total disability, he nonetheless is working, as the record, which it described as being obtained from the Department of Labor, discloses. (Exhibit P-7.)

As noted above, **respondent, Timothy Epifan**, did not appear or make himself available by phone at his number of record to present his case. The sole

document asserting his defense is Exhibit P-8, the request for hearing form dated November 22, 2016. The box checked therein claims permanent and total disability, rendering him unable to work. For that reason, respondent asks for an application to discharge the loan. No other evidence or testimony has been presented.

**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. 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.

In reply, respondent has not carried his burden of affirmatively demonstrating by a preponderance of evidence that he is entitled to discharge of his debt by reason of permanent and total disability rendering him unable to work. The uncontested evidence (Exhibit P-7) recording employment is to the contrary.

Therefore, the agency, NJHESAA, whose request for financial information from respondent went unanswered, 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 Timothy Epifan'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)(N) (2010).

December 1, 2017  
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency:

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Date Mailed to Parties:

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**LIST OF WITNESSES:**

**For petitioner:**

Aurea Thomas

**For respondent:**

None

**LIST OF EXHIBITS:**

**For petitioner NJHESAA:**

- P-1 Request for hearing, dated November 22, 2016
- P-2 Federal Stafford Loan Master Promissory Note
- P-3 Computer Printout
- P-4 Computer Printout
- P-5 Computer Printout
- P-6 Not admitted
- P-7 Record of respondent's employment
- P-8 Federal Student Aid Information for Borrowers

**For respondent:**

None