

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 13799-17

AGENCY DKT. NO. HESAA

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

Petitioner,

v.

ANTIONE W. JOHNSON,

Respondent.

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

No appearance by respondent, Antoine W. Johnson

Record Closed: October 26, 2017

Decided: November 28, 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 for default in payments.

Respondent, Antione Johnson, contested this appeal by the agency on the grounds of financial hardship.

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 September 19, 2017. Respondent Johnson challenges the proposed garnishment. The Acting Director and Chief Administrative Law Judge (OAL) appointed the undersigned on September 27, 2017, to hear and decide the matter. Hearing convened on October 26, 2017, but respondent, who had sought a telephone hearing, was not available when called at the telephone number of record. Pursuant to law, the hearing went forward nonetheless. On that same date the record closed.

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 were contested:

Ms. Thomas testified that she herself was familiar with all the books and records involved in the case. (Exhibit P-1.) She offered the following factual background through her testimony in support of exhibits admitted in evidence:

On October 1, 2006 respondent executed a Federal Consolidation Loan Application and Promissory Note. (Exhibits P-1, P-2.) In time, respondent defaulted on its payment and the lender of record sought reimbursement from the federal guarantor. The amount claimed was \$26,264.12. That amount was reimbursed to the lender, and NJHESAA assumed responsibility to recover the amounts owed.

After a history of no voluntary payments (Exhibit P-5), respondent was again declared to be in default (Exhibit P-6), at this point, with the accumulation of interest and collection fees added, for a total amount owed of \$50,943.76. A notice of intent to garnish was sent to respondent. He appealed, claiming undue financial hardship. (Exhibit P-11.)

Ms. Thomas recalled that the agency attempted to assist respondent in his efforts to repay. It sent respondent a financial statement form, which he returned with itemized information. The agency also attempted to place him in a loan rehabilitation program, and sent respondent a form seeking the necessary preliminary information. The form was not returned. Ms. Thomas stated that despite later efforts the agency thereafter was unable to reach respondent.

Lacking the further information sought, petitioner NJHESAA now seeks garnishment at the full rate of 15 percent.

Findings of Fact:

I **FIND** that no material facts are 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 the amount to be garnished is an unsustainable financial hardship.

Therefore, the agency, NJHESAA, should now be authorized to impose 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 Antoine W. Johnson'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 28, 2017
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency

Date Mailed to Parties:

mph

LIST OF WITNESSES:

For petitioner:

Aurea Thomas

For respondent:

None

LIST OF EXHIBITS:

For petitioner NJHESAA:

- P-1 Affidavit of Janice Seitz, dated August 10, 2017 (with attachments).
- P-2 Federal Consolidation Loan Application and Promissory Note
- P-3 FFELP Claim form from lender dated December 30, 2010
- P-4 & P-10 Default Master screens
- P-5 Borrower payment history: Antoine M. Johnson
- P-6 Student Control System Correspondence Screen: Antoine M. Johnson
- P-7 Sample of notice to garnish and request for hearing forms
- P-8 Sample financial statement
- P-9 Completed financial statemen and attachments, including Form 1040t: Antoine M. Johnson
- P-10 (See P-4 above)
- P-11 Pursuit Activity File: Antoine M. Johnson

For respondent:

None