

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 16355-16

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

Petitioner,

v.

RUTH BOWYER,

Respondent.

Philip I. Levitan, Esq., for petitioner (Fein, Such, Kahn & Shepard, attorneys)

Ruth Bowyer, pro se

Record Closed: January 6, 2017

Decided: January 13, 2017

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE

Ruth Bowyer (respondent) appeals the Notice of Administrative Wage Garnishment served upon her by the New Jersey Higher Education Student Assistance Authority (NJHESAA) for the purpose of repayment of a certain State guaranteed student loan. The underlying student loan was in the amount of \$15,625, paid by Chase to Centenary College on her behalf on or about August 9, 2004. NJHESAA acquired the loan from the bank or its successors pursuant to its guarantee against respondent's default. On or about June 29, 2016, NJHESAA served its Notice Prior to Wage Withholding upon respondent.

By her Request for Hearing received on or about August 4, 2016, respondent requested an in-person hearing and stated that the requested 15% wage garnishment would result in extreme financial hardship. NJHESAA filed respondent's Request for Hearing with its own documents under the Affidavit of Janice Seitz, its Program Officer. The matter was transmitted to the Office of Administrative Law (OAL) on October 21, 2016, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15. On October 31, 2016, the case was assigned to the undersigned. A plenary hearing was initially scheduled for December 28, 2016, but that date was adjourned by the undersigned and re-scheduled for January 6, 2017.

On the hearing date of January 6, 2017, respondent did not appear and has not since explained or requested an excuse for her absence. The matter proceeded with a default hearing in which the undersigned required NJHESAA to place its proofs on the record.

FINDINGS OF FACT

Based upon the papers and documentary evidence submitted, I **FIND** the following **FACTS**:

Respondent applied for and received a Federal Stafford Loan in the amount of \$15,625 in order to attend Centenary College on or about August 9, 2004. The loan was issued by Chase Manhattan Bank and guaranteed by NJHESAA. Apparently, respondent graduated in May 2008. There was an initial deferment period and some period of forbearance. Respondent made payments against these student loan debts which totaled over \$6,400. At some point, respondent failed to keep up with the payments.

When respondent defaulted on payments, NJHESAA was required to honor its guarantee to the financial lender, which occurred, on or about March 15, 2016. At that time, the amount of \$13,328.59 was due and owing. The last payment received appears to have been on or about August 1, 2016, in the amount of \$167. That payment appears to have been made by respondent in an attempt to rehabilitate the

loan delinquency. At the same time, respondent filed for a hearing on the garnishment notice. She thereafter provided NJHESAA with the financial information to demonstrate hardship on her family, with income and expenses detailed.

Brian Lyszkiewicz testified under oath at the proof hearing. He explained some of the various calculations and stated that the amount due and owing from respondent as of the day of the hearing was \$16,740.36 because, of course, the defaulted loan continued to accrue the interest as well as the costs of collection and assumption of the obligation by the NJHESAA. Interest accrues at a rate of \$1.52 per diem. The agency also has the right to collect its costs of pursuing the debtor. Those collection costs to date have accrued to over \$3,100 and are part of the number just stated.¹

LEGAL ANALYSIS AND CONCLUSIONS

The student loans at issue herein are part of the Federal Family Education Loan (FFEL) Program, 34 C.F.R. Part 682. As explained in the State regulations, this Program is a Federal-State-private sector coordinated effort to make higher education assistance available to deserving college students:

“Federal Family Education Loan Program” or “FFELP” means the collective term for the Stafford Loan Program (both interest subsidized and unsubsidized), the Supplemental Loan for Students or SLS Program, the Parent Loan for Undergraduate Students or PLUS Program, and the Consolidation Loan Program. The FFELP is a Federal-State-private sector partnership. Financial institutions make FFELP loans with private capital, State-designated guaranty agencies such as the Authority provide first-line insurance (guarantees for the loans), and the Federal government, through the Federal Department of Education, provides subsidies for student borrowers along with backstop reinsurance and general program oversight and regulation.

¹ As I stated to petitioner at the hearing, the presentation of these defaulted loan matters by the NJHESAA to the OAL have been lacking in clarity. There are numbers that do not add up; there is no itemization as to what payments the borrower has specifically made and when; there are computerized sheets attached without identification or explanation; and there is incomplete per diem information (for example, neither Mr. Lyszkiewicz nor Mr. Levitan could explain how costs were calculated.

N.J.A.C. 17:25-1.2

A “guaranty agency” is a nonprofit organization or state agency, such as NJHESAA, that “has an agreement with the United States Secretary of the Department of Education to administer a loan guarantee program” N.J.A.C. 9A:10-1.3(a). NJHESAA is the State-designated guaranty agency responsible for administration of the FFEL loan guarantee program for federal and state-funded student loans in New Jersey. N.J.S.A. 18A:71C-1 to -20; N.J.A.C. 9A:10-1.4. When a lender submits a claim for purchase by NJHESAA of a defaulted loan, NJHESAA must first determine the legitimacy of the claim for purchase by it of a defaulted loan and ensure that all federal and State requirements for default aversion have been followed. If NJHESAA determines that “due diligence” has been met, NJHESAA then may purchase the loan from the lender. After purchasing an overdue loan from a lender, NJHESAA may collect the debt by appropriate means, including garnishment of wages. N.J.A.C. 9A:10-1.14.

The debtor is entitled to request an administrative hearing before an independent hearing officer prior to issuance of a garnishment order. 20 U.S.C.A. § 1095a. Federal regulations, incorporated by reference in the State regulations, allow the borrower to dispute the existence or amount of the loan, 34 C.F.R. § 34.14(b), to demonstrate financial hardship, 34 C.F.R. § 34.14(c), or to raise various defenses based on discharge of the underlying debt, 34 C.F.R. § 682.402. The loans at issue in this matter are subsidized Stafford loans. With respect to that type of loan, the student is eligible to have the federal government pay the interest “until repayment of the loan begins and during any deferment periods.”

Initially, NJHESAA bears the burden of proving by a preponderance of the competent, relevant and credible evidence the existence and amount of the debt. 34 C.F.R. § 34.14(a) (2007); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962). Here, NJHESAA produced adequate documentation establishing the existence of the original debt, the amount currently in default, and the accounting (albeit without “showing their math”) for interest, costs and payments. I **CONCLUDE** that NJHESAA has proven the amount of the current amount due and owing.

Even if NJHESAA had sustained its burden of proof, respondent must be given the opportunity also to demonstrate, by a preponderance of the evidence, that the wage garnishment would be a financial hardship. 34 C.F.R. § 34.14 (2007). I **CONCLUDE** that respondent has waived such right due to her failure to appear for the scheduled evidentiary hearing. She also did not satisfy the requirements as of this date for rehabilitation of the loan in accordance with N.J.A.C. 9A:10-6.18.

In sum, and based on the facts presented, I **CONCLUDE** that petitioner has proven the amount of the claimed debt it seeks to have reduced to a wage garnishment order.

ORDER

Based upon all of the foregoing, it is **ORDERED** that the application of NJHESAA for an order mandating a garnishment against respondent's earned or unearned income is **APPROVED** in the amount of \$16,740.36 as of January 6, 2017, with interest and costs accruing therefrom.

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

January 13, 2017

DATE

GAIL M. COOKSON, ALJ

1/13/17

Date Received at Agency

Date Mailed to Parties:

id

APPENDIX

WITNESSES

For Petitioner:

Brian Lyszkiewicz

For Respondent:

None

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Seitz Affidavit and Attachments, dated September 28, 2016, with Supporting Materials submitted then or thereafter

For Respondent:

R-1 Request for Hearing, dated July 29, 2016, with Supporting Materials submitted then or thereafter