

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

**FINAL DECISION**

OAL DKT. NO. HEA 16359-16

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

Petitioner,

v.

**KATRELL MBOW,**

Respondent.

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**Philip Levitan**, Esq., or petitioner (Fein, Such, Khan & Sheppard, P.C.)

**Katrell Mbow**, pro se,

Record Closed: December 9, 2016

Decided: December 13, 2016

BEFORE **KIMBERLY A. MOSS**, ALJ:

**STATEMENT OF THE CASE**

Respondent, Katrell Mbow (Mbow or respondent), applied for and was granted a student loan for the purpose paying tuition to New Jersey City University. Respondent failed to make the proper installment payments when they became due and defaulted. Petitioner, the New Jersey Higher Education Student Assistance Authority (NJHESAA) was the guarantor of the loan and subsequently purchased it from the lender. NJHESAA seeks an order directing the employer of respondent to deduct from her wages, an amount equal to fifteen percent of her disposable wages and to remit this amount to petitioner until such time as respondent's student loan has been repaid. See

20 U.S.C. 1095a (2003), 34 C.F.R. 682.410(b)(9) (2003), N.J.S.A. 18A:72-1to21, N.J.A.C. 9A:10-1.4.

Respondent acknowledges acquiring the loan and failing to make payments as required. However, she asserts that the garnishment of fifteen percent of her wages would be a hardship.

### **PROCEDURAL HISTORY**

On or about June 29, 2016, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed a timely appeal to the Notice of Administrative Wage Garnishment. The matter was transmitted to the Office of Administrative Law on October 21, 2016. Respondent requested a hearing by telephone. I sent respondent a letter on October 31, 2016, stating that any additional documentation must be submitted by December 2, 2016. Respondent submitted additional documentation. The hearing was held on December 9, 2016. I closed the record on December 9, 2016.

### **FINDINGS OF FACT**

The facts are not in dispute. Based upon the documentation submitted by respondent, the affidavit of Janice Seitz, Program Officer with the NJHESAA and the enclosures submitted therewith—that is, a copy of the loan application executed by petitioner, a copy of the voluntary monthly repayment arrangement, pay stubs, income tax returns and the computer information documenting the loan history, including interest accrued, the testimony of Brian Lyszkiewicz, student loan investigator, Mbow and the documents submitted by Mbow, I make the following **FINDINGS OF FACTS**:

1. On or about November December 22, 2003, the defendant executed a Master Promissory note for guaranteed student loan(s) for the purpose of paying

- tuition to New Jersey City University. As a result thereof, Chase, JP Morgan Bank disbursed the sum of \$30,375.00.
2. Pursuant to the terms of the aforesaid promissory/installment note(s), payments became due and owing thereunder on the Guaranteed student loans.
  3. Debtor defaulted on the aforesaid student loan(s) by failing to make the payments required thereunder.
  4. As a result of the aforesaid default(s), the New Jersey Higher Education Student Assistant Authority was required to honor its guarantee. At the time NJHESSA acquired said loan(s), the amount of \$38,171.34 was due and owing. Interest continued to accrue pursuant to the promissory note. Collection costs have been assessed pursuant to 34 C.F.R. §682.410(b) (2).
  5. On or about 8/31/2016, NJHESSA, acting pursuant to 20 U.S.C.A., §1095(a) et seq. and 34 C.F.R. §682.410(9), issued a notice of Administrative Wage Garnishment to the defendant.
  6. The defendant timely filed this appeal of NJHESSA's Notice.
  7. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the defendant's employer to deduct fifteen percent (15%) of the defendant's disposable wages and remit the same to the New Jersey Higher Education Student Assistance Authority until such time as the defendant's student loans have been repaid.
  8. Respondent has submitted bi-weekly pay stubs with a net income \$1,113.69 for the period of November 16, 2016 to December 1, 2016. In addition petitioner submitted letters from Lots of Love Academy for child care expenses for her daughter in the amount of \$125 per month and Dr. Lena Edwards Charter school for before care for her son in the amount of \$52.00 per month. Her rent is \$830 per month. Respondent submitted food bills for

the month of November 2016 in the total amount of \$129.00. She submitted clothing bills in for the month of November 2016 in the amount of \$127.75. Respondent submitted a November 2016 automobile insurance bill in the amount of \$123. Respondent submitted a monthly PSE&G bill for October 2016 with the monthly charge minus the prior balance of \$92.66.

9. Respondent resides with her two minor children.

### **LEGAL ANALYSIS AND CONCLUSIONS**

NJHESAA is a state-designated agency responsible for administration of the loan guarantee program for federal and state funded student loans. N.J.S.A. 18A:72-1 to 21; N.J.A.C. 9A:10-1.4. After purchasing an overdue loan from a lender, NJHESAA may collect the debt by appropriate means, including garnishment of wages. 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. 1095(a). Federal 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.

A guaranty agency “may garnish the disposable pay of an individual to collect the amount owed by the individual, if he or she is not currently making required repayment under a repayment agreement,” provided, however, that the individual be granted an opportunity for a hearing conducted by an independent hearing official such as an Administrative Law Judge. 20 U.S.C.A. 1095a (a) (5). 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). New Jersey statutes and regulations require the NJHESAA to purchase certain defaulted student loans and permit NJHESAA to seek garnishment of wages as one method of repayment. N.J.S.A. 18A:71C-6; N.J.S.A. 18A:72-16; N.J.A.C. 9A:10-1.14.

When a lender submits a claim for purchase by NJHESAA of a defaulted loan, NJHESAA first determines the legitimacy of the claim for purchase by NJHESAA of a defaulted loan and ensures that all federal and state requirements for default aversion have been followed. If NJHESAA determines that “due diligence” has been met and purchases the loan from the lender, NJHESAA then seeks to collect on the debt. N.J.A.C. 9A:10-1.4(b) (7) & (8); N.J.A.C. 9A:10-1.14(b).

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(c) and (d); 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 debt and the amount currently in default. Since petitioner has sustained its burden of proof, respondent must demonstrate, by a preponderance of the evidence that either the debt does not exist, the amount is incorrect or that the loan should be discharged. 34 C.F.R. 34.14. Respondent seeks to avoid collection by pleading the following financial hardship.

In order to show financial hardship, respondent must prove by a preponderance of credible evidence the amount of the costs incurred for basic living expenses for her exceed the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d).

In this matter respondent’s gross monthly income is \$4,615.40. Her monthly disposable income, after payroll deductions is \$2,412.92. This figure was arrived at by multiplying her bi-weekly net income of 1,113.69 by 2.1666. Respondent’s rent is \$830. Her monthly utility cost is \$92.66. Her total cost for utilities and housing are \$922.66. Respondent submitted bills for monthly food costs of \$129.85. Respondent submitted bills for monthly apparel in the amount of \$ 127.74. The national standards for housekeeping supplies expenses for three people is \$60, for personal care products and services expenses for three people is \$62 and miscellaneous monthly expenses for

three people is \$266. I am including respondent's child care expenses in the amount of \$177 per month in miscellaneous expenses.

The local standards expenses for ownership of a car are \$471 and the expenses for operation of a car is \$250. Respondent submitted out of pocket medical expenses of \$15 for the months of May 2016, July 2016, August 2016 and November 2016 in the amount of \$15 each month.

Respondent's monthly expenses are \$2,304.36. Her monthly disposable income is \$2,411.77. Her income exceeds her expenses by \$107.41. A wage garnishment of fifteen percent of petitioner's disposable income would be \$361.77, which exceeds her disposable income after expenses. A wage garnishment of one and one half (.015) percent of respondents monthly income is \$36.18. This would not be a financial hardship for respondent.

Based on the facts adduced and the legal citations referred to above, I **CONCLUDE** that petitioner has met its burden to prove the existence and the amount of the claimed debt, and that repayment thereof is in default. Respondent has provided documentation to support her claim that a wage garnishment of fifteen percent would be a financial hardship.

### **ORDER**

Accordingly, it is **ORDERED** that the total amount due and owing by respondent shall be the subject of a wage garnishment in an amount not to exceed 1.5% of respondent's disposable wages after expenses which is \$36.18 per month.

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This decision is final pursuant to N.J.A.C. 17:25-1.7 and 34 C.F.R. § 682.410(b)(9)(i)(N) (2007).

December 13, 2016

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DATE  
ljb

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**KIMBERLY A. MOSS, ALJ**

**EXHIBITS**

For Petitioner

P-1 Agency Documents

For Respondent

Income and Expenses Documents