

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

**FINAL DECISION**

OAL DKT. NO. HEA 08984-14

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

Petitioner,

v.

**JULIETTE MCGLONE,**

Respondent,

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**Doug Fisher**, Esq., appearing for petitioner (Solomon & Solomon)

**Juliette McGlone**, pro se,

Record Closed: July 30, 2014

Decided: August 1, 2014

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

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Respondent, Juliette McGlone (McGlone or respondent), applied for and was granted a student loan to pay for tuition at Lincoln Technical Institute. She 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 McGlone 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.

On or about February 26, 2014, NJHESAA issued a Notice of Administrative Wage Garnishment to respondent. Respondent filed an untimely appeal to the Notice of Administrative Wage Garnishment. The matter was transmitted to the Office of Administrative Law on July 14, 2014. Respondent requested a telephone hearing. The hearing was held on July 30, 2014. Respondent provided documents on August 1, 2014; I closed the record at that time.

### **FINDINGS OF FACT**

Based upon the testimony of McGlone and Neal Ginsberg, Student Loan Investigator and 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 and the computer information documenting the loan history, including interest accrued, I make the following **FINDINGS OF FACT**:

1. On or about June 11, 2004, respondent executed a master promissory note for a guaranteed student loan for the purpose of tuition payment to Lincoln Technical Institute. Citibank in reliance upon the master promissory note disbursed the amount of \$7500 to Lincoln Technical Institute.
2. Pursuant to the terms of the promissory note, monthly payments became due and owing.

3. Respondent defaulted on the aforesaid student loans by failing to make the required payments in October 2011.
4. Petitioner is the state agency in New Jersey designated as a guarantor agency for federal and state funded student loans.
5. As a result of the default of respondent, petitioner was required to honor its guarantee.
6. At the time petitioner acquired the loan the amount of \$8,470.60 was due and owing.
7. Pursuant to the terms of the loan, interest has continued to accrue.
8. On or about February 26, 2014, petitioner, 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 directing that fifteen percent of respondent's disposable wages be remitted to petitioner until such time as the respondent's student loans have been repaid.
9. Respondent filed an untimely appeal of NJHESAA's Notice of Administrative Wage Garnishment.
10. The amount of \$ 8,078.68 is presently due and owing.  
  
Respondent is a seasonal worker for the YWCA. She works from September through June. She collects unemployment in July and August.
11. Respondent lives with her adult son, who is unemployed and has no income. Her son has minimal brain dysfunction.
12. Respondent's biweekly salary is varies. To calculate her monthly income I added the net income from her checks for the pay periods of 4/27/2014 to

5/10/2014 of \$524.36 and 5/11/2014 to 5/24/2014 of \$509.07 which equaled \$1,033.43. I divided that amount by two and arrived at \$516.72 which I multiplied by multiplied by 2.17 which equaled is \$1,121.28. I next added her net income from the pay period of 5/25/2014 to 6/ 7/20/2014 of \$461.55 and the pay period of 6/8/2014 to 6/21/2014 of \$582.33 which equaled \$1,043.85. I divided that amount by two and arrived at \$521.92 which I multiplied by 2.17 and arrived at \$1,132.67. I next added \$1132.67 and \$1,121.28 which equaled \$2,253.95; which I divided by two to determine respondents monthly salary of \$1,126.97. She receives Social Security monthly in the amount of \$587. Respondent receives food stamps in the amount of \$110 per month. Her total disposable monthly income is \$1,823.97.

13. Respondent's rent is \$1,100. She owns a car. She did not provide any evidence that she is making payments on the car. Her monthly expense for car insurance is \$82.84. Her monthly expense for gas is \$120. Her total expenses for operation of her car is \$202.84
14. Respondent has the following monthly expenses: AT&T \$180, Medicare insurance \$104.90, doctor bill \$60.00 and food \$300.
11. The National Standards published by the Internal Revenue Service under 26 U.S.C. 7122(c) 2 for a family of two for: food, housekeeping supplies, apparel & services, personal care products & services and miscellaneous monthly is \$1,092.
12. The Local Standards for Housing and Utilities for a family of two living in Bergen County is \$3,218.
13. The National Standards for car ownership is \$517. The Local Standards operating cost for one car in Bergen County is \$342.

14. The National Standards for out of pocket health care for people over the age of sixty-five is \$144.

### **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. McGlone seeks to avoid collection by pleading financial hardship.

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

In this matter petitioner's monthly income is \$1,713.97. She receives food stamps in the amount of \$110 per month which increases her monthly income to \$1823.97. Respondent's rent of \$1,100 and AT&T bill of \$180 is less than the Local Standard. Respondents operating cost for her car is \$202. The National Standard for a family of two for: food, housekeeping supplies, apparel & services, personal care products and services and miscellaneous is \$1,092. The National Standard for monthly out of pocket health care costs for people over the age of sixty-five is \$144. Respondent's monthly expenses are \$2,538. Respondent's expenses exceed her income.

I **CONCLUDE** that McGlone proved by a preponderance of the evidence that garnishment of her salary would be a financial hardship for her because her expenses exceed her income

**ORDER**

Based upon all of the foregoing, it is **ORDERED** that the application of NJHESAA for an order mandating a wage garnishment against respondent's disposable wages is **DENIED**.

This decision is final pursuant to N.J.A.C. 17:25-1.7 and 34 C.F.R. §682.410(b) (9) (N) (2003).

August 1, 2014

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DATE  
ljb

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**KIMBERLY A. MOSS, ALJ**

**Witnesses**

For Petitioner

Neal Ginsberg

For Respondent

N/A

**EXHIBITS**

For Petitioner

P-A Agency Documents

For Respondent

Document Packet