

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

**FINAL DECISION**

OAL DKT. NO. HEA 07162-14

AGENCY DKT. NO. HESAA

**JAMES C. DOUGHERTY,**

Appellant,

v.

**NEW JERSEY HIGHER EDUCATION**

**STUDENT ASSISTANCE AUTHORITY,**

Respondent.

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**James C. Dougherty**, appellant pro se (On The Papers)

**Richard W. Krieg**, Esq., for respondent (The Law Offices of Richard W. Krieg,  
attorneys)

Record Closed: November 12, 2014

Decided: December 10, 2014

BEFORE **SANDRA ANN ROBINSON**, ALJ:

**STATEMENT OF THE CASE**

James C. Dougherty, appellant, appeals the determination of respondent, the New Jersey Higher Education Student Assistance Authority (NJHESAA), to garnish his wages due to his failure to timely repay defaulted student loan(s). Respondent contends that appellant signed documents as the borrower of funds and has defaulted on loan payments and thus a wage garnishment is warranted. On February 4, 2014, respondent issued a Notice of Administrative Wage Garnishment on appellant that

explained the proposal to garnish his wages due to his failure to repay the loan(s). Respondent contends that appellant has not provided sufficient information to prove that an extreme hardship will occur if a Wage Garnishment Order is issued.

### **PROCEDURAL HISTORY**

On February 21, 2014, appellant filed a timely "Request For Hearing" form with check-marks placed next to the paragraphs that read: "I do not owe the full amount shown because I repaid some or all of this loan" and "Garnishment of fifteen percent of my disposable income would cause an extreme financial hardship" and " This loan was discharged in bankruptcy" and" I believe that this loan is not an enforceable debt in the amount stated for the reasons explained in the attached letter."

On June 2, 2014, the New Jersey Higher Education Student Assistance Authority transmitted this matter to the Office of Administrative Law (OAL), for a hearing pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The matter was assigned to the undersigned on June 12, 2014, and scheduled for a hearing on July 31, 2014. In the interim, appellant notified OAL that he currently resides in North Carolina and desired to have telephonic conferences. Telephonic discussions commenced on July 31 and continued on August 14, September 17, and October 24, 2014. Prior to the August 14 discussions appellant wrote respondent about contradictions in the Sallie Mae disclosure statement and the Sallie Mae Loan Servicing Manual, which would be a topic during the next telephone discussions. Appellant also provided additional documents on October 24 and 28, 2014, to support his points-of-view during the discussions. Appellant's October 28, 2014, correspondence included a copy of the September 26, 1995, Sallie Mae Payment Schedule. After receiving appellant's last correspondence and document, the record remained open for ten business days to receive additional evidence and/or rebuttals regarding proof of an extreme hardship or to otherwise provide good cause as to why an Order for Wage Garnishment should not be issued. No additional evidence was received and appellant's and respondent's documents were marked as evidence. The record was closed on November 12, 2014.

**BACKGROUND**

Appellant's letter that is attached to his Request For Hearing sets forth the following, in pertinent part:

I am requesting a hearing to object to the interest rate of the loan, when it was consolidated, the term of the loan, the collection costs, the current balance, wage withholding.

The attached December 1995 statement shows interest rates varying from 8.00 % to 9.13% for 10 years. Then, after a consolidation of loans was offered, the interest rate increased to 9%. I consented to the consolidation. I did not consent to the 9% interest rate.

The original term of the loan was 10 years. At some point in time, the term was revised to 20 years. I was not notified and did not agree to the change of the term of the loan. I have paid against the loan for 12 years. I am disputing the change in term from 10 years to 20 years.

I am disputing the collection costs and incidental fees of \$2,144.23 from December 2007 till February 2012. I was not employed for 12 months consecutively. For eight of the 50 months, from December 2007 till February 2012, I was in school and completed 4 certifications. During these 50 months, I actively sought employment, with no avail.

Attached is a December, 1995 statement showing my original loans with a principal balance of \$17,410. From June, 1995 till December, 2007, I paid an estimated amount of \$16,320.

. . .

Wage withholding will cause extreme financial hardship for my family and I. From December 2007 till February 2012, I was not able to find suitable employment. Since February 2012, I have been employed and am earning half of the salary I earned in 2007. This decrease in salary has caused numerous adjustments in my life style.

. . . [I]n November 2012, my wife and I filed for bankruptcy. Under the advisement of my attorney, my student loans were included in the bankruptcy. It was not until we were discharged, that I learned, my student loans were not

accepted into my bankruptcy.

On May 1, July 29, and August 3, 2014, appellant wrote to respondent and provided supplemental information about the loans. Appellant informed respondent that since 1995 he had moved six times and changed banks three times and that copies of his bank statements and cancelled checks were not available due to one of the banks going out-of-business. The moving and loss of documents prevented him from proving that the current principle balance is not \$12,553.

On August 5, 2014, respondent mailed a letter to appellant with a copy to the undersigned that indicates:

Mr. Dougherty had a question about the repayment period. Mr. Dougherty applied for and was granted fifty-five (55) months of deferment/forbearance for these loans. This has resulted in the extended period of overall repayment that the borrower has to repay the loan. This is noted in the Loan Servicing Manual of 2001, which is . . . attached to this correspondence . . . . [K]indly find attached a copy of the application/promissory note along with the reference spreadsheet. Also, find enclosed a copy of the disclosure statement for the defaulted loans that are apart of New Jersey Higher Education Student Assistance Authority's Application for administrative wage garnishment.

### **ISSUES**

Based on the law, statutes, regulations, facts and documents presented in this matter, has appellant established that an extreme hardship exists that warrants a discharge of the loan debt(s), deferment of payment, or a decrease of a fifteen-percent garnishment? Should an Order issue to direct appellant's employer to deduct from his wages an amount equal to fifteen percent (15%) of disposable wages and to remit the deduced amount to NJHESAA until the loan(s) is/are repaid?

### **FINDINGS OF FACT**

Based on the affidavit and statement of NJHESAA program officer, the information provided by respondent's counsel, and the testimony and documentation presented by appellant, I **FIND**:

1. Janice Seitz is the program officer in the NJHESAA servicing and collections unit. She is familiar with appellant James Dougherty's file and respondent's application for wage garnishment of appellant/borrower's wages for purposes of repayment of a guaranteed student loan(s). Ms. Seitz's affidavit in support of the wage garnishment is based on the documents agreed upon and signed by appellant and the information in the affidavit is credible;
2. On or about January 20, 1996, the appellant executed an application/promissory note for a guaranteed student loan(s) for the purpose of consolidation of all loans. The loan was initially for ten years. As a result thereof, Sallie Mae disbursed the sum of \$17,644.90. Respondent provided a true and correct copy of the application;
3. Pursuant to the terms of the aforesaid promissory/installment note(s), payments became due and owing thereunder on or about May 19, 1996, on the guaranteed student loan(s). Non-payments on the loan started in 2007 before appellant was laid-off;
5. Appellant defaulted on the aforesaid student loan(s) by failing to make the payments required thereunder on or about March 28, 2013;
6. As a result of the default(s), the NJHESAA was required to honor its guarantee. At the time NJHESAA acquired the loan(s), the amount of \$ 9,917.40 was due and owing. Interest continued to accrue pursuant to the promissory note(s). Collection costs are assessed pursuant to 34 C.F.R. § 682.410(b)(2);
7. On or about February 4, 2014, NJHESAA, 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 appellant;

8. Appellant timely filed an appeal of the NJHESAA Notice of Administrative Wage Garnishment based on a claim that he does not owe the full amount shown because he repaid some or all of this loan; the garnishment of fifteen percent of his disposable income would cause an extreme financial hardship; the loan was discharged in bankruptcy; and the loan is not an enforceable debt in the amount stated for the reasons specified in his letter dated February 21, 2014;
9. Appellant requested that an appeal hearing on this matter be based on appellant's written statements, supporting documents, and loan records in respondent's possession;
10. For appellant to succeed on appeal, the petition had to dispute: (1) the existence of a debt, (2) the amount of the debt, and that (3) a delinquency exists;
11. Appellant could not dispute that a debt still exists;
12. Appellant could not dispute that \$9,917.40 plus interest remains due and owing on the loan debt;
13. Appellant did not dispute that payments against the remaining debt are delinquent;
14. Appellant did not submit documents to support the existence of an extreme hardship if garnishment of fifteen percent of his disposable income occurred;
15. Appellant's Sallie Mae Consolidation Loan into a twenty-year loan, was before filing for bankruptcy in November 2012. The loan was not discharged as a debt based on the bankruptcy filing;
16. The maximum payment period on the Sallie Mae loan is fifteen years. At the

time the disclosure was presented the time was over fifteen years and was calculated out to twenty years because twenty years made the payments more amenable;

17. Appellant had a fifty-five-month deferment;
18. Appellant did not prove his argument regarding inaccurate collection costs and incidental fees;
19. Appellant's arguments regarding his inability to prove his case because of lost bank statements and cancelled checks, due to no fault on respondent's part, is believable, but bears no weight in determining the outcome of this case;
20. Appellant acknowledges that an outstanding balance exists.

### **LEGAL AUTHORITY AND DISCUSSION**

HESAA is a New Jersey State agency that administers Federal and State-funded student loan guarantees. N.J.S.A. 18A:72-1 to 21; N.J.A.C. 9A:10-1.4. Respondent purchases loans on which student borrowers have defaulted and pursues various remedies to collect the debts including wage garnishment up to fifteen percent of the debtor's wages. 20 U.S.C.A. § 1095(a). The debtor must be afforded an opportunity to contest the garnishment and be heard before an independent hearing officer such as an Administrative Law Judge. Ibid.

Respondent's counsel completed a review of the process of NJHESAA's efforts to seek reimbursement of appellant's loan(s), which included the process completed by Janice Setiz, NJHESAA Program Officer for the Servicing Collections Unit, as set forth in her Affidavit, dated May 12, 2014. The Affidavit sets forth the procedures followed prior to and after the Notice of Intent to Implement a Wage Garnishment was mailed to appellant, and provides the amount of the outstanding loan balance(s) as of the date NJHESAA acquired the loans.

Debt collection is subject to Federal regulation. HESAA bears the burden of proving the existence and amount of the debt and that the debt is currently delinquent, 34 C.F.R. § 34.14(a)(2), whereupon the burden shifts to the debtor (appellant) to establish grounds to discharge the loan debt or to postpone wage garnishment. 34 C.F.R. § 34.14(c), (d); 34 C.F.R. § 682.402. Respondent, a non-profit organization and State agency, 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). HESAA has adopted and incorporated the United States Code, chapter 28, subchapter IV, part B, and those parts of the Code governing the Federal Family Education Loan Program. 20 U.S.C.A. § 1071 et seq.; N.J.A.C. 9A:10-1.1; 34 C.F.R. § 682.100 et seq.

If an appellant disputes the existence or amount of a debt, the appellant must prove by a preponderance of the evidence that no debt exists, the amount is incorrect, or that the appellant is not delinquent. 34 C.F.R. § 34.14(b). The appellant's affirmative defenses must be proven by a preponderance of the evidence. 34 C.F.R. § 34.14(c), -24(a).

### **CONCLUSION**

Based on the law, the testimonial and documentary evidence, I **CONCLUDE** that respondent has proven the existence and the amount of the claimed debt, and that repayment thereof currently is delinquent and in default. Therefore, consistent with the above findings of fact, NJHESAA has proven the legitimacy of the claim against appellant. I further **CONCLUDE** that appellant has not submitted sufficient evidence on which a defense to this action would warrant a discharge or postponement of the loan debt or a postponement of wage garnishment.

### **ORDER**

Based on all of the above, I **ORDER** that an administrative wage garnishment be issued in the form of an Order directing appellant's employer to deduct from appellant



wages an amount equal to fifteen percent (15%) of appellant's disposable wages and remit those wages to the NJHESAA until such time as the appellant's student loan(s) are fully repaid.

This decision is **FINAL** pursuant to 34 C.F.R. § 682.410(b)(9)(i)(N) (2010).

December 10, 2014 \_\_\_\_\_

DATE

\_\_\_\_\_

**SANDRA ANN ROBINSON, ALJ**

Date Mailed to Parties:

lr

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**APPENDIX**

**WITNESSES**

**For Appellant:**

James C. Dougherty (No Appearance/On The Papers)

**For Respondent:**

Richard W. Krieg, Esq.

**EXHIBITS**

**For Appellant:**

- A-1 Request For Hearing dated February 21, 2014, with supporting documents:  
(1) Appellant's Letter to NJHESAA, dated February 21, 2014  
(2) Sallie Mae Loan Servicing Center letter , dated December 11, 1995  
(3) NJHESAA Monthly Bill Statement, dated October 15, 2013  
(4) Application Promissory Note, signed and dated by appellant, January 20, 1996
- A-2 Appellant's letter to NJHESAA, dated May 1, 2014
- A-3 Appellant's letter to NJHESAA, dated July 29, 2014
- A-4 Appellant's letter to NJHESAA, dated August 3, 2014
- A-5 Appellant's letter to NJHESAA, dated August 5, 2014
- A-6 Appellant's letter to NJHESAA, dated October 24, 2014
- A-7 Appellant's letter to NJHESAA, dated October 28, 2014

**For Respondent:**

- R-1 Affidavit of Janice Seitz, dated May 12, 2014
- R-2 A true and correct copy of the Application and Promissory Note, dated January 20, 1996
- R-3 Federal Family Education Loan Program Claim Form, claim date March 24, 2012

- R-4 Loan Management System Default System Claim Processing, dated March 22, 2013
- R-5 Loan Management System Claim Worksheet Summary, dated March 22, 2013
- R-6 Status Monthly Repayment
- R-7 NJHESAA Correspondence Control System - Student Correspondence
- R-8 New Jersey Pursuit Activity File 2009-2014
- R-9 NJHESAA Loan Account Summary Records
- R-10 NJHESAA Loan Application
- R-11 Interest Simulation
- R-12 Letter to Borrower - Intent To Withhold Wages
- R-13 Notice Prior To Wage Withholding
- R-14 Request for Fair Hearing
- R-15 Respondent's Request For Additional Information In Support of A Wage Garnishment Hearing, dated February 24, 2014
- R-16 Respondent's letter to appellant and OAL, dated August 5, 2014, with attachments:
  - (1) Application and Promissory Note, dated January 20, 1996
  - (2) Sallie Mae Disclosure Statement, dated March 28, 1996
  - (3) Lender Verification Certificate, dated March 18, 1996
  - (4) The Smart Loan Account Consolidation Operations letter, dated February 5, 1996