DECISION

OAL DKT. NO. HEA 17078-14

AGENCY DKT. NO. HESAA

NEW JERSEY HIGHER EDUCATION STUDENT ASSISTANCE AUTHORITY (NJHESAA),

Petitioner,

v.

LOUISE JOSEPH,

Respondent.

Russell P. Goldman, Esq., for petitioner

Louise Joseph, respondent, pro se, did not appear

Record Closed: February 17, 2015 Decided: March 31, 2015

BEFORE **JOSEPH LAVERY,** ALJ t/a:

STATEMENT OF THE CASE

The **New Jersey Higher Education Student Assistance Authority (NJHESAA, the agency**), **petitioner**, acting under authority of 20 U.S.C.A. Sec. 1095a(a) and (b) and 34 C.F.R. 682.410(b)(9) moves to garnish respondent's wages.

Respondent Louise Joseph opposes this action on appeal.

Today's decision grants the right to garnish the wages of respondent Louise Joseph in an amount not to exceed 15 percent of her disposable wages.

PROCEDURAL HISTORY

This matter was filed for hearing in the Office of Administrative Law (OAL) on December 3, 2014, by the agency head for hearing. The Acting Director and Chief Administrative Law Judge, on January 24, 2015, then ordered that the case be heard before the undersigned. Respondent did not appear, request a telephone hearing, or submit on the papers.

After completion of testimony by respondent and by the agency's witness, and after admission into evidence of associated exhibits, the hearing record remained open to receive letter-briefed argument from the agency's counsel. It was filed in the OAL on February 24, 2014. On that date, the record closed.

ANALYSIS OF THE RECORD

Background:

This appeal is brought to determine the extent to which, if at all, garnishment should be imposed. Many of the material facts are not seriously in contention:

On August 25, 1999, **respondent Louise Joseph** applied for a Federal Stafford Loan, to be disbursed by the lender, Educaid (Exh. P-2). On or about January 21, 2001, she executed a Federal Stafford Loan Master Promissory Note, under the terms of which she promised to repay all sums provided (Exh. P-3). In time, respondent fell into default. The lender then holding the note, Navient-Wells Fargo, submitted a claim on June 24, 2005 to petitioner, NJHESAA, as the guarantor of the original loan. The agency honored the claim. On June 28, 2005, it paid off the bank (Exh. P-4).

The agency's witness, **Aurea Thomas**, who was personally familiar with the case, related that, after the agency acquired the loan, appellant defaulted after periods of non-payment. The amount per month sought by the agency had been set at $76. The last payment received was June 30, 2014 (Exh. P-4).

The agency therefore gave respondent notice of intent to garnish. She responded with a request to be heard in opposition. On the request for hearing form (Exh. P-5) she objected for the reason that a 15 percent garnishment would amount to an extreme financial hardship. Thus prompted, the agency forwarded a financial disclosure statement form within which respondent was to provide facts pertaining to her economic status. Ms. Thomas related credibly that the forms sent were not returned. When respondent did not appear to be heard on the calendared date of February 17, 2015, the hearing nonetheless went forward,

as required by law. This decision, grounded on the record of that proceeding, now issues.

Arguments of the parties:

The agency initially insisted that it has both authority and obligation to obtain garnishment at a full 15 percent of respondent's disposable pay, taking into account arrears. There has been non-payment beyond the permissible limit set by regulation, as the agency's unrebutted evidence at hearing has confirmed.

In post-hearing letter-brief, it argues that respondent's time limit for accomplishing full payment of the debt was set at ten years. 20 U.S.C. 1077(a)(2)(B); 34 C.F.R. 682.200. As a practice, the agency can accept a satisfactory payment schedule after default, when regular payments are made accordingly. It also can call for full payment of the balance due, under the terms of the note.

As for the 15 percent limitation, in the agency's view, this proves that the defaulted balance should be recovered as quickly as possible, otherwise this limitation would have no meaning. It would make no sense to assume respondent could simply await the passage of the full ten years, then pay in lump sum. For that reason, the agency "requests that the garnishment be authorized not to exceed 15% as limited by section 1095a."

As noted above, **respondent Louise Joseph** did not appear at hearing. Her one submission was the Request for Hearing document asserting extreme hardship if a 15 percent garnishment were imposed. No supporting proofs were provided on this record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact:

I FIND that:

There are no serious disputes of material fact concerning the amounts of principal and interest in issue (Exhs. P-1, P-2, P-2a, P-3, P-4, and P-5).

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:

Under authority of the provisions of 20 U.S.C.A. Sec. 1095a(a) and (b) a hearing was held before the undersigned. During this proceeding, the agency, NJHESAA, was required to show by a preponderance of evidence: (a) that respondent here is the debtor under the promissory note, (b) that the debt exists in the amounts the agency has calculated, and (c) that the debtor is delinquent. This the agency has done.

The testimony of the agency's witness was credible and supported by the unchallenged proffer of Exhibits P-1 through P-5, now in evidence. There is nothing sufficient in the hearing record to challenge the agency's calculations of the loan principal, the costs of collection, the interest accruing, or the amounts unpaid and still owing. Respondent's claimed ameliorating circumstances in the Request for Hearing Form have not been demonstrated through testimony or documentary proofs.

As the case now stands, respondent has had ample opportunity to challenge the existence or amount of the debt or arrears, or the calculations thereof. Her appeal attacks the debt's validity because of alleged extreme financial hardship. The defense is not grounded on any available financial information, despite the agency's invitation to provide it.

Summary:

The agency has satisfied its burden to prove (a) that a debt exists in the amounts stated, (b) that respondent accrued it, and (c) that respondent has been delinquent in repaying it. Respondent did not submit information addressing the terms of her repayment schedule which would inform the agency's determination of a garnishment amount in light of her claimed extreme hardship. 20 U.S.C.A.

1095a(a)(1) through (5). The facts of record therefore justify garnishment of her wages in appropriate proportion.

That garnishment should be established through uniform calculation procedures in place in the agency which are consistent with congressional intent and with the agency's duties to carry out that intent pursuant to the enabling Federal Family Education Leave Program, 20 U.S.C. 1071, et seq. Against the background of the facts of this case, the agency's process of establishing repayment can include: readjustment of the present monthly schedule so as to take into account the back monies now owed, to be recovered through such regular payments necessary to effect satisfaction of the debt within the ten years allotted by law. 20 U.S.C. 1077(a)(2)(B); 34 C.F.R. 682.200.

ORDER

I ORDER, therefore, that the loan amount owing and defined of record which is here sought by petitioner NJHESAA, plus accrued interest and fees, be recovered by garnishment in a manner consistent with the above findings and reasoning. This garnishment may not exceed 15 percent of disposable wages.

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

March 31, 2015
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency: March 31, 2015

Date Mailed to Parties:

mph

LIST OF WITNESSES:

For petitioner NJHESAA:

Aurea Thomas

For respondent:

None

LIST OF EXHIBITS:

For petitioner NJHESAA:

P-1 Affidavit of Janice Seitz, dated September 12, 2014

P-2 Application and Promissory Note for Federal Stafford Loans: Louise Joseph, dated August 25, 1999

P-3 Federal Stafford Loan Master Promissory Note: Louise Joseph, dated 1/21/01

P-3a Reverse side of the foregoing promissory note

P-4 Request for Hearing form: Louise Joseph, dated 5/13/2014

P-5 Default screen, NJHESAA

For respondent:

None