

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

OAL DKT. NO. HEA 17079-14

AGENCY DKT. NO. HESAA

**NEW JERSEY HIGHER EDUCATION
STUDENT ASSISTANCE AUTHORITY
(NJHESAA; THE AGENCY),**

Petitioner,

v.

FRANCESCA MARCO,

Respondent.

Russell P. Goldman, Esq. for petitioner

No appearance by Francesca Marco, respondent

Record Closed: February 25, 2015

Decided: April 2, 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. § 1095a(a) and (b) and 34 C.F.R. § 682.410(b)(9) moves for an order of wage garnishment against respondent.

Respondent, Francesca Marco, contests this appeal by the agency.

Today's decision grants the agency's request to impose garnishment.

PROCEDURAL HISTORY

This is an appeal brought by the agency, NJHESAA, seeking authority to garnish. It was filed in the Office of Administrative Law (OAL) on December 3, 2014. The Acting Director and Chief Administrative Law Judge appointed the undersigned to hear and decide the matter on January 14, 2015. Hearing was scheduled for February 17, 2015, and convened on that date, with only the agency present. Post-hearing letter brief was filed by the agency on February 25, 2015, closing the record.

ANALYSIS OF THE RECORD

Background:

The agency presented its case through testimony by **Aurea Thomas, Senior Investigator**. Both she and counsel described their fruitless attempts to contact respondent prior to hearing.

Ms. Thomas identified and, based on her personal knowledge, adopted as her own testimony that information provided through affidavit by Janice Seitz, NJHESAA Program Officer dated September 12, 2014 (Exh. P-1). She also identified Exhibit P-2, the Federal PLUS Loan Application and Promissory Note signed by respondent on August 24, 2007. In time, appellant defaulted on the loan extended to her by ACAPITA Education Finance Corporation, which then turned to the government guarantor NJHESAA for payment. A check was issued by the agency on February 20, 2014, repaying to the lender both principal and interest in the total amount of \$19,118.01 (Exh. P-3).

Stating that respondent eventually defaulted with the agency as well, Ms. Thomas testified that respondent has not submitted to the agency any of the payments scheduled thereafter for remittance (Exh. P-4). Respondent had been obliged to submit \$290 per month. As of February 12, 2015, respondent had a balance for repayment amounting to \$25,322.33. With payments in arrears, a notice was issued alerting respondent to ultimate garnishment unless monies were received. Respondent answered with a Request for Hearing form, checking the reason for her objections as “extreme financial hardship which would follow if her disposable wages were attached in the amount of 15%.” (Exh. P-5).

Reacting to this claim, NJHESAA forwarded a financial statement form soliciting information to support respondent's claim. The form was not returned, Ms. Thomas said. She added that when the loan comes into default status, the payments continue to be calculated, as a practice, on the balance unpaid, including interest and costs, but the payoff is intended to be completed within a ten-year span.

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, and in the full amount, otherwise the ten-year limitation would have no meaning. It would make no sense, the agency argues, 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."

Respondent Francesca Marco, though she had requested an in-person hearing, did not appear or submit exhibits.

Findings of Fact:

I **FIND** that there is no proven dispute over the material facts of record.

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).

Analysis of the Record:

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 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 (Exh. P-5) have not been demonstrated through testimony or documentary proofs. It is respondent who bears the burden of proof in any challenge to these facts, once established. 34 C.F.R. 682.410(b)9(i)(F)(2).

As the case now stands, respondent has had ample opportunity to contest the existence or amount of the debt and 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 proportion should be established through uniform calculation procedures now 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 a repayment schedule can include: readjustment of the present

monthly schedule of payment 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-year maximum 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.

April 2, 2015
DATE

JOSEPH LAVERY, ALJ t/a

Date Received at Agency:

April 2, 2014

Date Mailed to Parties:

mph

LIST OF WITNESSES:

For petitioner NJHESAA:

Aurea Thomas

For respondent:

Respondent did not appear or provide witnesses

LIST OF EXHIBITS:

For petitioner NJHESAA:

- P-1 Affidavit of Janice Seitz
- P-2 Federal PLUS Loan Application and Promissory Note: Francesca Marco, dated August 24, 2007
- P-3 NJHESAA default screen
- P-4 Payment history screen: Francesca C. Marco
- P-5 Request for Hearing: Francesca C. Marco

For respondent:

None