

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. HEA 07685-16

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

Petitioner,

v.

MARIE ALFIERI,

Respondent.

Kortney Swanson Davis, Esq., for petitioner (Schachter Portnoy, attorneys)

Marie Alfieri, pro se

Record Closed: July 13, 2016

Decided: August 3, 2016

BEFORE **RICHARD McGILL**, ALJ:

The New Jersey Higher Education Student Assistance Authority (hereinafter “petitioner” or “NJHESAA”) seeks an administrative wage garnishment against Marie Alfieri (hereinafter “respondent,” “defendant” or “debtor”) as the result of her failure to repay a student loan guaranteed by petitioner. Respondent opposes the administrative wage garnishment on multiple grounds.

PROCEDURAL HISTORY

On or about March 1, 2016, petitioner issued a notice of administrative wage garnishment to respondent. In response, respondent submitted a request dated March 16, 2016, for a hearing by telephone.

The matter was transmitted to the Office of Administrative Law on May 19, 2016, for determination as a contested case. By letter dated June 3, 2016, the undersigned advised the parties that any additional documentation must be submitted by July 1, 2016. The hearing by telephone was conducted on July 5, 2016, and the record closed on July 13, 2016, upon the receipt of post-hearing submissions.

ISSUES

The first issue in this proceeding is whether petitioner has established the existence and amount of the debt and that the debt is delinquent. The second issue is whether respondent has proven that any of her assertions in opposition to the administrative wage garnishment are meritorious.

FACTS

A. Petitioner's Proofs

Petitioner presented the testimony of Senior Investigator Aurea Thomas, who reviewed the affidavit of Janice Seitz, who is employed by NJHESAA as a Program Officer in the Servicing/Collections Unit. The affidavit along with the testimony of Investigator Thomas indicates as follows:

1. On or about December 6, 2004, the defendant executed a Master Promissory note for guaranteed student loan(s) for the purpose of paying tuition to Thomas Edison State University. As a result thereof, Sallie Mae Trust/Wilmington Trust disbursed the sum of \$8,966.00.

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 Assistance Authority was required to honor its guarantee. At the time NJHESAA acquired said loan(s), the amount of \$8,755.21 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 March 1, 2016, NJHESAA, acting pursuant to 20 U.S.C.A. §1095a(a) et seq. and 34 C.F.R. § 682.410(b)(9), issued a notice of administrative wage garnishment to the defendant.
6. The defendant timely filed this appeal of NJHESAA's notice.
7. Pursuant to the aforesaid statute and regulations, NJHESAA seeks an Order directing the defendant's employer to deduct from the wages of the defendant, an amount equal to 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. The amount due and owing as of July 5, 2016, is \$10,068.66.

In regard to the defenses raised by respondent, Investigator Thomas stated that petitioner sent a form pertaining to financial hardship. Respondent completed the form and her loan payments were reduced. Nonetheless, respondent never made any payments. Petitioner also sent respondent an application in regard to total and permanent disability. Investigator Thomas provided an explanation in regard to attachments to the affidavit.

B. Respondent's Presentation

Respondent's testimony, exhibits and summation indicate that in October 2004, she applied for admission and was accepted into Thomas Edison State University. Also in October 2004, respondent began to experience uncontrollable seizures and syncopal episodes. Her cognition was impaired, and repeated brain trauma left her without clear memory or recollection to the point where she could not remember how to spell her last name. Respondent had ever present migraines. Respondent was employed as a tuition planner, but due to her condition she received temporary disability and then permanent disability benefits. Respondent was hospitalized in May 2005 as a result of her condition. Notes from her doctor state that respondent could not stand, sit or be anywhere unattended and generally support respondent's testimony.

Respondent's condition stabilized in late fall 2006, but she was never able to return to her work as a tuition planner. Respondent's cognition was permanently impacted. Respondent has found employment working as a housekeeper, but she has not returned to a career in finance.

Respondent enrolled in Thomas Edison State University to improve her prospects in the finance industry. Respondent acknowledges that during this time a loan was issued. Nonetheless, respondent never set foot on campus, logged into a course or completed a single assignment. Respondent informed the school of her disability and withdrew from classes. Thomas Edison State University granted admissions extensions based upon respondent's cognitive impairment in December 2004, February 2005 and May 2005, despite the fact that respondent never had the opportunity to attend Thomas Edison State University.

When respondent contacted Thomas Edison State University a year ago, she was informed that a loan disbursement check had been issued. She further learned that the check was deposited into an account that was not hers during a time that she was in the hospital from May 30, 2005 to June 5, 2005, but the bank would not disclose

the identity of the owner of the account due to privacy laws. According to respondent, Thomas Edison State University should not have certified the loan as she had made no progress, let alone cut a disbursement check. The school wrongfully certified and accepted tuition monies and then dispersed funds, which were illegally cashed or deposited. Respondent would repay the loan, if she had received any benefit from Thomas Edison State University. Respondent repaid a previous student loan in full. Respondent believes that the school was profoundly negligent in certifying this loan and in issuing the disbursement check. The cashing of the disbursement check was a criminal act, but respondent has gotten nowhere attempting to pursue a criminal investigation due to the passage of ten years. Respondent characterizes the actions of Thomas Edison State University in regard to a loan for courses that respondent could not hope to take at the time as predatory.

Respondent acknowledged that she signed the note in question in December 2004. Respondent claims that her signature was forged on the disbursement check, but there is no police report. Respondent was in a very bad marriage from 2000 until 2012. Her partner handled their finances and was not as attentive to this situation as respondent needed. Respondent was disabled at the time the loan was issued, but she acknowledged that she has a job and is not currently disabled.

In regard to petitioner's presentation, respondent points out that petitioner's witness was not the same individual who prepared the affidavit. Respondent maintains that she was denied due process of law in that she was not given the opportunity to cross-examine the individual who prepared the affidavit. Respondent contends that there were conflicts between the testimony of petitioner's witness and the affidavit. Further, respondent argues that the testimony of petitioner's witness should be dismissed as hearsay.

In regard to the attachments to the affidavit, the disbursements were \$3,312 on November 30, 2014, and \$3,313 on May 30, 2005. These dates would coincide with the anticipated progress of a typical student, but in respondent's case these are the dates

on which her admissions extensions were granted. Respondent asserts that the school certified satisfactory academic progress on November 30, 2004, and May 30, 2005.

Further, respondent maintains that the loan was certified for disbursement prior to the execution of the promissory note. In other words, respondent was issued the obligations of a contract before she agreed to its terms.

Respondent maintains that her loan was “batch” certified. Respondent finds proof of the batch certification in the fact that certain information specific to her is missing. Respondent regards this situation as a false certification. As a result, the amount of \$875 was cancelled on March 4, 2005. The school had received additional information from respondent’s college with the effect that she was deemed a sophomore rather than a junior and that her eligibility for a loan was reduced from \$7,500 to \$6,625. Respondent maintains that these loans were falsely certified due to incomplete executed documentation, inability to benefit and lack of satisfactory academic progress required for eligibility.

Respondent further asserts that petitioner alleges that a “refund” check was issued in her name and cashed but has provided no proof of its existence. Respondent contends that the alleged “refund” check does not and never has existed.

Respondent maintains that the loan is unenforceable due to her inability to cognitively consent, contract or participate and therefore benefit, as well as ineligibility to borrow under the program due to lack of satisfactory academic progress. Further, Thomas Edison State University has been unjustly enriched by tuition monies that it received as the result of its own false certifications of the loan. Petitioner has also been unjustly enriched by two involuntary payments that they received after also falsely certifying its eligibility to garnish her taxes.

Finally, respondent maintains that the loan is not enforceable due to false certifications of consent to contract, consent to terms, eligibility, satisfactory academic progress and ability to benefit and because she did not have the opportunity to attend

the school to which these funds were paid because of significant cognitive impairment and disability.

C. Findings

Respondent testified that from October 2004 into 2006 she suffered from medical conditions that impaired her cognition and her memory to the point where she could not remember how to spell her last name. Respondent's testimony concerning her medical condition is accepted as true, as it is supported by medical documentation. But in view of respondent's medical condition, there is no assurance that her testimony concerning the events in 2004 and 2005 is accurate and complete. Therefore, respondent's testimony in regard to those events is not considered to be credible.

With respect to the affidavit and attachments thereto, petitioner's records are considered to be highly reliable. Respondent's presentation is not persuasive that there was any error or wrongdoing on the part of petitioner or Thomas Edison State University. Having reviewed the affidavit and its attachments, I accept the contents thereof as true, and the above-enumerated paragraphs one through eight are **FOUND AS FACT**.

LAW AND ANALYSIS

Pursuant to federal law, a guaranty agency such as petitioner may garnish the disposable pay of an individual to collect the amount owed by that individual, if he or she is not currently making the required repayment. 20 U.S.C.A. § 1095a(a). The amount deducted may not exceed fifteen percent of disposable pay. 20 U.S.C.A. § 1095a(a)1. In order to impose an administrative garnishment, petitioner must present records to establish the existence and amount of the debt and that the debt is delinquent. 34 C.F.R. § 34.14(a).

A loan may be discharged for various reasons such as total and permanent disability and false certification by a school. 34 C.F.R. § 682.402(a)(1). The requirements for discharge of a loan are set forth with specificity in pertinent federal regulations, e.g., total and permanent disability in 34 C.F.R. § 682.402(c); false certification by a school in 34 C.F.R. § 682.402(e).

Respondent's grounds for relief will be considered in the order mentioned in her hearing request. Preliminarily, respondent did not request relief on the basis of total and permanent disability, but she mentioned disability multiple times. Therefore, discharge of a loan on the basis of total and permanent disability will be discussed briefly.

A borrower's loan is discharged if the borrower becomes totally and permanently disabled as defined in 34 C.F.R. § 682.200(b) and satisfies the other requirements of 34 C.F.R. § 682.402(c). One requirement is that the borrower must submit a loan discharge application in accordance with 34 C.F.R. § 682.402(c)(2). In this case, there is no indication that respondent has submitted this type of application. A substantive requirement is that the individual must be unable to engage in any substantial gainful activity. 34 C.F.R. § 682.200. Here, respondent acknowledged that she works as a housekeeper. Under the circumstances, respondent's loan cannot be discharged on the basis of total and permanent disability. It follows that respondent's medical condition is not in itself grounds for relief from the proposed garnishment.

Respondent requested a hearing on the grounds that a garnishment of fifteen percent of her disposable income would result in an extreme financial hardship. A debtor who objects to a proposed garnishment on the basis of financial hardship has the burden to prove by a preponderance of the credible evidence that withholding the amount of wages proposed in the notice would leave the individual unable to meet basic living expenses. 34 C.F.R. § 34.14(c)1. To prove a claim of financial hardship, the debtor must prove by credible documentation the amounts of costs incurred for basic

living and the income available from any source to meet those expenses. 34 C.F.R. § 34.24(d).

Here, respondent did not present any documentation in regard to her income and expenses. Therefore, I **CONCLUDE** that respondent has failed to establish that an administrative wage garnishment would create an extreme financial hardship.

Respondent requested a hearing on the grounds that she had a condition that prevented her from meeting state requirements for performing the occupation for which she was receiving training at the school. This contention is based on the requirement of “ability to benefit” as set forth in 34 C.F.R. §§ 682.402(e)(1)(i)(A) and (13). Specifically, 34 C.F.R. § 682.402(e)(13)(iii) provides in pertinent part as follows:

Notwithstanding paragraphs (e)(13)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if - -

- (A) The school certified the eligibility of the student for a FFEL Program loan; and
- (B) At the time of certification, the student would not meet the requirements for employment (in the student’s State of residence) in the occupation for which the training program supported by the loan was intended because of a physical or mental condition, age, or criminal record or other reason accepted by the Secretary.

Respondent presented evidence that she had a medical condition, but she did not identify any state requirements for any particular occupation. Under the circumstances, I **CONCLUDE** that respondent’s request for relief is without merit.

In her request for a hearing, respondent also asserted that a representative of Thomas Edison State University signed her name without permission on the loan application, promissory note, loan check(s), or authorization for her loan to be disbursed by electronic funds transfer or master check. The difficulty with respondent’s assertion is that it is without factual support. Therefore, I **CONCLUDE** that this basis for relief is without merit.

Finally, respondent states in her request for a hearing that she believes that her loan is not an enforceable debt in the amount stated due to an improper certification by the school and predatory lending to a disabled student. A loan may be discharged if the borrower's eligibility to receive the loan was falsely certified by an eligible school. 34 C.F.R. § 682.402(e)(1)(i). The borrower has the burden of proof. 34 C.F.R. §34.14(b).

34 C.F.R. § 682.402(e)(1)(i) provides in pertinent part as follows:

A student's or other individual's eligibility to borrow shall be considered to be falsely certified by the school if the school - -

- (A) Certified the student's eligibility for FFEL Program loan on the basis of ability to benefit from its training and the student did not meet the applicable requirements described in 34 CFR Part 668 and section 484 (d) of the Act, as applicable and as described in paragraph (e)(13) of this section; or
- (B) Signed the borrower's name without authorization by the borrower on the loan application or promissory note.
- (C) Certified the eligibility of an individual for an FFEL Program loan as a result of the crime of identity theft committed against the individual, as that crime is defined in § 682.402(e)(14).

As can be seen from this section, respondent's argument is essentially a repetition of her previous assertions. For reasons set forth above, I **CONCLUDE** that respondent's contention that the loan is unenforceable due to an improper certification by the school is without merit.

Lastly, respondent contends that the loan is not an enforceable debt due to predatory lending to a disabled student. As noted above, the grounds for discharge of a loan are set forth with specificity in 34 C.F.R. § 682.402. Respondent's argument does not fit any of the categories set forth in 34 C.F.R. § 682.402. Therefore, I **CONCLUDE** that respondent's argument is without merit.

To summarize, petitioner has established the existence and amount of respondent's debt and the fact that respondent is delinquent with respect to the debt. In contrast, respondent has failed to establish any basis to discharge the loan or otherwise deny approval of the garnishment. Therefore, I **CONCLUDE** that an administrative wage garnishment should be approved.

Accordingly, it is **ORDERED** that an administrative wage garnishment shall be issued immediately directing respondent's employer to deduct from her wages an amount equal to fifteen percent of her disposable wages and remit this amount to the New Jersey Higher Education Student Assistance Authority until such time as her outstanding debt resulting from her student loan has been repaid.

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

August 3, 2016

DATE

RICHARD McGILL, ALJ

APPENDIX

WITNESS LIST

For petitioner:

Aurea Thomas

For respondent:

Marie Alfieri

EXHIBIT LIST

P-1 Affidavit of Janice Seitz

R-1 Statement of Marie Alfieri with attachments