
In the Matter of: :
: :
: HUDBCA No. 04-K-CH-AWG04
Carol V. Weaver, : Claim No. 780539430
: :
: :
Petitioner :
:

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DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing Urban Development (“HUD”). This alleged debt resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3702D), authorized Federal agencies to utilize administrative wage garnishment as a remedy as for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether this debt is past-due and enforceable against Petitioner and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170(b). This hearing was conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner thereafter must present by a preponderance of the evidence

that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation law. 31 C.F.R. § 285.11(f)(8)(ii). Pursuant to 31 C.F.R. § 285.11(f)(10)(i), issuance of a wage withholding order was stayed until the issuance of this written decision.

Summary of Facts and Discussion

On August 27, 1996, Petitioner executed and delivered to Home-Pro, the seller, an installment note in the amount \$35,389.00 for home improvement that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703, and Home-Pro then assigned the note that same day to Statewide Mortgage Company (hereinafter "Statewide"). (Secretary's Statement, hereinafter, "Secy. Stat." Exh. A). Statewide assigned the note to Norwest Home Improvement, Inc. (hereinafter "Norwest"). (Secy. Stat. Exh. B, Declaration of Brian Dillon, hereinafter "Dillon Decl.") Petitioner entered into two separate modifications of the loan in 2000 and 2001 with American's Service Company (hereinafter, "ASC") acting for Norwest. *Id.* Petitioner defaulted on the note, and ASC assigned the note to the United States of America on 20 November 2002 pursuant to 24 C.F.R. § 201.54. *Id.* The Secretary now holds the note on behalf of the United States of America. *Id.* Petitioner is indebted to the United States in the following amounts: \$12,690.68 as the unpaid principal balance as of November 30, 2003; \$905.75 as the unpaid interest on the principal balance at 2% per annum through November 30, 2003; and interest on said principal balance from December 1, 2003 at 2% per annum until paid. *Id.*

The Secretary received from Petitioner on November 24, 2003 by fax a copy of Petitioner's pay stub for the pay period ending October 25, 2003. (Secy. Stat., Exh. B, Dillon Decl. at ¶ 8). Petitioner's bi-weekly gross earnings were \$1,774.42. *Id.* Allowable deductions from Petitioner's gross earnings were: Federal income tax, \$226.00; Social Security, \$99.89; Medicare, \$23.36; Missouri state income tax, \$63.00; health insurance ("SECT"), \$137.05. *Id.* Fifteen percent of Petitioner's disposable bi-weekly income of \$1,225.12 is \$183.77 as opposed to the Secretary's proposed bi-weekly garnishment in the amount of \$187.77.

The Secretary has filed a Statement with documentary evidence in support of his position that the Petitioner is indebted to the Department in a specific amount. Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner disputes the terms of the proposed repayment schedule and asserts that administrative wage garnishment would cause financial hardship.

Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner states in her faxed letter to Board that "the circumstances that caused [the loss of her] home still exist (although to a somewhat lesser degree)." Attached to Petitioner's letter was a Consumer Debtor Financial Statement dated November 25, 2003 that listed, among other things, monthly income, monthly expenses, assets and liabilities. Petitioner claimed a monthly

income of \$2,400.00, but her disposable monthly income is more than \$2,400.00. Multiplying Petitioner's bi-weekly disposable income of \$1,225.12 times 26 (number bi-weekly pay periods in one year) and divided by twelve equals a monthly disposable income of \$2,654.43.

Petitioner has provided the Board with credible information sufficiently detailed to allow findings as to whether the Secretary's proposed garnishment would cause financial hardship. Petitioner has monthly expenses totaling \$2,371.84. Those expenses include building expenses, \$500.00; child support, \$50.00; gasoline, \$200.00; electricity, \$280.00; food, \$500.00; cable, \$22.00; medical expenses, \$644.00; disability insurance, \$22.68; fitness center, \$39.00; household insurance, \$64.16; and phone, \$50.00. The Board finds that Petitioner has debts that total \$8,311.91. Petitioner's assets amount to \$40.00 in cash, \$8.95 in checking, and a 401(k) with a value of \$74.22. Other assets include two vehicles—one inoperable—with a combined value of \$1,300.00 and a one fourth interest in a property valued at \$3,200.00. Petitioner's home is only partially complete with unfinished walls, a concrete slab floor, a tar roof, and no indoor toilet.

Petitioner has not proposed a lesser rate of garnishment as an alternative to the Secretary's proposed garnishment, but the Board has the authority to order garnishment at a lesser rate based upon the record before it. 24 C.F.R. § 17.170(b); 31 C.F.R. § 285.11(f)(11)(ii) and (iii). The maximum authorized rate for garnishment is 15% of Petitioner's disposable income. 31 C.F.R. § 285.11(i)(2)(i)(A). Petitioner's monthly disposable income, \$2,654.43, exceeds her monthly expenses, \$2,371.84, by \$283.37. Garnishment at the rate proposed by the Secretary, \$183.77 bi-weekly, reduces her disposable income below her expenses with few assets to make up the difference.

Upon due consideration, this Board finds that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, but that garnishment of fifteen (15) percent of Petitioner's disposable income constitutes a financial hardship. Garnishment at the maximum rate would leave Petitioner with a disposable income and assets insufficient to pay necessary monthly expenses. The Board finds that garnishment should be at a rate no greater than ten (10) percent of Petitioner's disposable income.

ORDER

It is my determination that the amount to be garnished bi-weekly in satisfaction of this debt shall not exceed the sum of ten (10) percent of Petitioner's disposable income.

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated.

It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 10% of Petitioner's disposable pay.

The Secretary shall not be prejudiced from seeking an increase in the amount to be recovered by administrative wage garnishment if, in the future, Petitioner's income increases or her bi-weekly expenses for necessities are reduced.

H. Chuck Kullberg
Administrative Judge

February 4, 2004