



Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:

Janice Sanders,
Petitioner

HUDOA No. 10-H-CH-AWG127
Claim No. 72-1003902

Janice Sanders
2405 Southmore Boulevard #17
Houston, TX 77004

Pro se

Sara Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "Secretary"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

The administrative judges of this Office are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a debtor. This hearing is 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 show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). 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 of law. Id. Pursuant to 31 C.F.R. § 285.11(f)(4), on September 22, 2010, this Office stayed the issuance

of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated September 22, 2010.)

Background

As a means of providing foreclosure relief, HUD advanced funds to the FHA insured lender to bring the Petitioner’s mortgage current. (Secretary’s Statement (“Sec’y Stat.”), filed October 19, 2010, ¶ 2 and ¶ 3.) On May 23, 2002, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) in favor of the Secretary of Housing and Urban Development. The amount to be repaid under the Partial Claims Promissory Note is \$3,294.00. (Id.) The Note cited specific events that made the debt become due and payable; one of those events being that the Petitioner paid in full all amounts due under the primary Note and related mortgage insured by the Secretary. (Sec’y. Stat., ¶ 4., Attached Note, ¶ 3(A)(i).)

On or about May 12, 2003, the FHA insurance on Petitioner’s primary note was terminated when the lender informed the Secretary that the note was paid in full. (Sec’y Stat., ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated October 7, 2010, ¶ 4.)

Upon full payment of the primary note, Petitioner was to pay off the Partial Claims Promissory Note by sending payment to HUD at the office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, S.W., Washington, D.C. 20410. (Sec’y Stat., ¶ 3.) Petitioner failed to make payment on the Partial Claims Promissory Note at the place and in the amount specified. As a consequence, Petitioner’s debt to HUD is delinquent. (Sec’y. Stat., ¶ 6.)

The Secretary has made efforts to collect the amounts due under the Partial Claims Promissory Note from the Petitioner, but has been unsuccessful. Therefore, the Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$3,294.00 as the unpaid principal balance as of September 30, 2010;
- (b) \$474.90 as the unpaid interest on the principal balance at 4% per annum through September 30, 2010; and
- (c) interest on said principal balance from October 1, 2010 at 4% per annum until paid.

(Sec’y. Stat., ¶ 9; Dillon Decl., ¶ 5.)

Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), a Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated July 20, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 7.) On August 20, 2010, a Wage Garnishment Order was issued to Petitioner’s employer by the Department of Treasury, Financial Management Service. (Sec’y Stat., ¶ 8; Ex. A; Dillon Decl., ¶ 8.)

In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms.

Petitioner submitted a request to garnish her wages at \$53.00 per pay period. (Petitioner's Letter ("Pet'r Ltr"), filed October 6, 2010.)

A Modified Wage Garnishment Order dated October 7, 2010 was issued to Petitioner's employer, the City of Houston, by the Department of Treasury, Financial Management Service. (Sec'y Stat., ¶ 12; Ex. D; Dillon Decl., ¶ 10)

Discussion

Petitioner does not deny that the claimed debt is not past due and enforceable. Petitioner alleges that collection of the debt by administrative wage garnishment would cause her extreme financial hardship. (Petitioner's Letter ("Pet'r Ltr"), filed September 20, 2010.) Petitioner states:

"Maam or Sir, I am not finanically [sic] able to repay this debt through my payroll because I have been battling with two chronic illnesses for the last 2yrs. And with the doc. [sic] and meds. [sic] as expensives [sic] as they are each month I don't have enough finanically [sic] to support myself. So please take into conseteration [sic] of whats [sic] left after I pay my bills and for personal needs also."

As support, Petitioner submitted a copy of her bi-weekly pay statement for the period ending September 3, 2010. (Ex. B.) This statement indicates that Petitioner's gross pay totaled \$1,345.50; less allowable deductions of \$271.66 (Federal Tax \$143.07; Social Security \$77.65; Medicare \$18.16; HMO \$19.05; Dental Insurance \$13.73) resulting in a bi-weekly disposable income of \$1,073.84, \$2147.68 monthly. (Pet'r Ltr., Attach., dated September 10, 2010). The maximum rate of garnishment allowed by statute is 15% of Petitioner's disposable pay. 31 U.S.C. § 3720D(b)(1); 31 C.F.R. § 285.11 (i)(2)(i)(A). Based on Petitioner's pay statement, the administrative wage garnishment authorized at 15% of Petitioner's disposable pay would result in a bi-weekly repayment schedule under such garnishment order equal to \$161.08. (Dillon Decl., ¶ 8.)

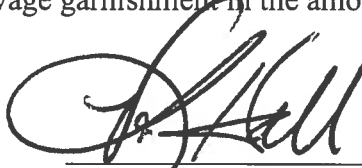
Petitioner requested a wage garnishment of \$53.00 bi-weekly. (Sec'y Stat., ¶ 12; Ex. C; Dillon Decl., ¶ 9.) The Secretary has considered Petitioner's current financial situation and has accepted Petitioner's request to a Wage Garnishment of \$53.00 bi-weekly. The Secretary's proposed repayment schedule is \$53.00 bi-weekly in accordance with the agreement between HUD and Petitioner. (Sec'y Stat., ¶ 12; Ex. C; Dillon Decl., ¶ 9.)

ORDER

Based on the mutually agreed upon repayment agreement between the parties in this proceeding, it is my determination that the amount to be garnished in satisfaction of the debt that is the subject of this proceeding shall not exceed the bi-weekly garnishment amount of \$53.00 bi-weekly as claimed by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the 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 \$53.00 bi-weekly.

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge

April 19, 2011