



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

In the Matter of:

**Zena Cole,**

Petitioner

HUDOA No. 10-H-NY-AWG52  
Claim No. 721006048

Zena Cole  
128 Wood Avenue  
Hyde Park, MA 02136

*Pro se*

Julia Murray, Esq.  
US Department of Housing and  
Urban Development  
Office of Assistant General Counsel  
for New York/New Jersey Field Offices  
26 Federal Plaza, Room 3237  
New York, NY 10278

For the Secretary

**RULING ON SECRETARY'S MOTION TO DISMISS AND  
MOTION FOR DOCKETING**

Petitioner filed a timely request to present evidence that an alleged past-due, legally enforceable debt of Petitioner to the U.S. Department of Housing and Urban Development ("HUD") should not be collected by the Secretary by means of administrative wage garnishment. Pursuant to 24 C.F.R. §§ 17.170, 20.4(b), and 31 C.F.R. § 285.11(f), the administrative judges of the HUD Office of Appeals are authorized to determine whether certain debts exist and are legally enforceable and whether they can be collected by means of administrative wage garnishment. As a result of Petitioner's request, referral of the debt to the U.S. Department of the Treasury was temporarily stayed by this Office on February 24, 2010. (Notice of Docketing, Order, and Stay of Referral.)

On March 19, 2010, a Motion to Dismiss and Motion for Docketing was filed by the Secretary in which the Secretary states that he "respectfully requests that the instant Administrative Wage Garnishment proceeding be dismissed without prejudice." The Secretary further requests that Petitioner's request for a hearing be docketed as a request for a hearing in an offset action. (Motion to Dismiss). The Secretary further states "On August 24, 2009, Petitioner was served with the prerequisite Notice of Intent to Collect via Treasury offset."

Upon due consideration, the Secretary's Motion to Dismiss is **GRANTED**.

However, the Secretary's Motion for Docketing Petitioner's Request for Hearing as a Request for Hearing in an administrative offset action is **DENIED** in order to remain consistent with the provisions in 24 C.F.R. § 17.152(a). Section 17.152(a) of Title 24 of the Code of Federal Regulations requires that:

the "debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. The *debtor* should send a copy of the Notice of Intent with a letter notifying the Office of Appeals within 25 calendar days from the date of the Department's Notice of Intent that he or she intends to present evidence." (emphasis added.)

While the Secretary has served Petitioner with the prerequisite Notice of Intent to Collect via Treasury Offset, by regulation the Petitioner has to file the appeal that challenges collection of a debt by administrative offset. Thus, the Secretary cannot request that an administrative offset case, not yet appealed by the Petitioner, be placed on the Court's docket. Without Petitioner's appeal, there is no hearing to be docketed.

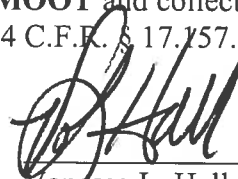
Furthermore, the Request for Hearing, as reflected in the record, is specifically purposed to challenge collection by means of administrative wage garnishment and, as such, cannot be used now as a basis for docketing an administrative offset claim. Therefore, it is hereby

**ORDERED** that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment of any federal payment due Petitioner because the Secretary has decided "to close their file and not to pursue Administrative Wage Garnishment proceeding against Petitioner at this time," and instead decided to collect this claim by means of an administrative offset.

The Stay of Referral of this matter to the U.S. Department of the Treasury issued by this Office on February 24, 2010 shall remain in place indefinitely.

This matter is **DISMISSED** without prejudice.

The Motion for Docketing is **DENIED** as **MOOT** and collection by administrative offset shall proceed as set forth in 24 C.F.R. § 17.157.



Vanessa L. Hall

Administrative Judge

March 26, 2010