



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

In the Matter of:

Gail P. Mayhue,
Petitioner

HUDOA No. 10-H-NY-AWG96
Claim No. 52-0883319AM

Gail P. Mayhue
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Pro se

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For the Secretary

AMENDED DECISION AND ORDER

On June 21, 2010, Petitioner filed a request for 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"). 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 have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 an undue 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 June 22, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated June 22, 2010.)

Background

On March 7, 1990, Petitioner executed and delivered to Tri-County Homes, a Retail Installment Contract ("Note") in the amount of \$18,128. (Secretary's Statement ("Sec'y Stat."), filed August 3, 2010, ¶ 2, Ex. A.) Contemporaneously, on March 7, 1990, the Note was assigned by Tri-County Homes to Logan-Laws Financial Corporation. (*Id.*, Ex. A, Note, p.2.) On April 6, 1990, Logan-Laws Financial Corporation assigned the Note to the Government National Mortgage Association ("GNMA"). (Sec'y Stat., ¶ 4; Ex. B, Declaration of Christopher C. Haspel, Director, Mortgage-Backed Securities Monitoring Division, GNMA ("Haspel Decl.") ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (*Id.*)

Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner, but has been unsuccessful. The Secretary has filed a Statement in support of his position that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$7,713.35 as the unpaid principal balance;
- (b) \$1,429.61 as the unpaid interest on the principal balance at 13.5% per annum through April 22, 2002; and
- (c) interest on said principal balance from April 23, 2002 until paid.

(Sec'y Stat., ¶ 6; Ex. B., Haspel Decl., ¶ 6.)

A Notice of Intent to Initiate Administrative Wage Garnishment, dated November 5, 2009, was sent to Petitioner. (Sec'y Stat., ¶ 7; Ex. B., Haspel Decl., ¶ 7.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, but to date Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 8; Ex. B, Haspel Decl., ¶¶ 7-8.)

The Secretary's proposed repayment schedule is 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 9; Ex. B, Haspel Decl., ¶ 8.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists or that the amount of the alleged debt is incorrect. Petitioner may also present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner claims the terms of the proposed repayment schedule would create a financial hardship. Petitioner states as her reason "financial hardship" and requests a "financial percentage reduction." (Hearing Request from Petitioner ("Pet'r Hr'g Req."), dated June 21, 2010.) As support, Petitioner provided a copy of her Financial Statement in which she listed her monthly income and also identified her fixed monthly expenses. However, such evidence proved to be insufficient without supporting documentation such as copies of bills incurred, or copies of cancelled checks or receipts that document proofs of payment of monthly bills, credit

cards, or other related expenses. Petitioner was ordered on three occasions to provide such documentation but Petitioner failed to comply with the Court's Orders. (*See Notice of Docketing, Order, and Stay of Referral, dated June 22, 2010; Order, dated August 13, 2010; Order to Show Cause, dated September 8, 2010.*)

As a final point, Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a non-complying party*. (Emphasis added).

Accordingly, because Petitioner has also failed to comply with any of the Orders issued by this Office, I find that Petitioner's non-compliance to the Orders issued provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

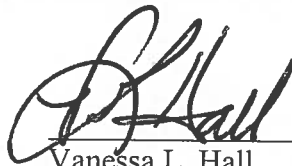
Based on the foregoing, it is my determination that the amount to be garnished in satisfaction of the debt that is the subject of this proceeding shall be no more than 15% of Petitioner's disposable income.

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 15% of Petitioner's disposable income.

While this Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

This Amended Decision and Order supersedes the Decision and Order originally issued on October 14, 2010 because the garnishment amount reflected in the original decision was in error.



Vanessa L. Hall
Administrative Judge

October 19, 2010