



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

In the Matter of:

Charles Pryor,
Petitioner

HUDOA No. 10-M-CH-AWG106
Claim No. 721005537

Charles Pryor
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Lakeside, CA 92040

Pro Se

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DECISION AND ORDER

On July 19, 2010, this Office received from Petitioner a request for hearing concerning a proposed administrative wage garnishment relating to 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 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 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 July 22, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On or around October 19, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") to secure a partial claim paid on his behalf by the Secretary to pay the arrearages on his primary FHA-insured mortgage and avoid the foreclosure of his primary residence. (Secretary's Statement ("Sec'y Stat."), filed August 4, 2010, ¶ 1, Ex. 1.) The amount to be repaid under this Note is \$10,352.19 which becomes due and payable when the original FHA mortgage matures, when the borrower pays the primary Note in full, when the maturity date of the primary Note has been accelerated, when the Note or related security instrument is no longer insured by the Secretary, or when the property is no longer occupied by the purchaser as his principal residence. (Sec'y Stat. ¶ 3, Ex. 1, Note at ¶ 4.) On or around August 16, 2005 the FHA mortgage insurance on the first mortgage was terminated as the mortgagee indicated the mortgage was paid in full. (Sec'y Stat., ¶ 5; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated August 4, 2010, ¶ 4.)

Pursuant to the terms and conditions of the Note payment is due in full. (Sec'y Stat. ¶ 6.) HUD has attempted to collect the amounts due under the Note but Petitioner remains delinquent. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 5.) The Secretary alleges that Petitioner is in default and is indebted to HUD in the following amounts:

- a) \$8,043.52 as the unpaid principal as of July 31, 2010;
- b) \$33.52 as the unpaid interest on the principal balance at 5% per annum through July 31, 2010; and
- c) interest on said principal balance from July 31, 2010, at 5% per annum until the Note is paid in full.

(Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated October 27, 2009 was mailed to Petitioner. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 6.) Petitioner was offered the opportunity to enter into a repayment agreement but declined to do so. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 7.) A Wage Garnishment Order, dated November 27, 2009, was issued to Petitioner's employer. (Sec'y Stat., ¶ 11; Dillon Decl., ¶ 8.) To date HUD has received 26 garnishment payments totaling \$4,314.49 and these payments reflect the outstanding balance claimed by HUD. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 9.) The Secretary's proposed repayment schedule remains at 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 13; Dillon Decl., ¶ 10.)

Discussion

31 U.S.C. §§3716 and 3720A provide federal agencies with administrative wage garnishment as a means of collecting debts owed to the United States government. The burden of proof is on the debtor to show that the debt claimed by the Secretary is unenforceable and not past-due. 24 C.F.R. §17.152(b). Failure to provide documentary evidence that the alleged debt is unenforceable or not past-due shall result in a dismissal of the debtor's request for a review of the alleged debt. *Id.*

Petitioner does not dispute the existence or enforceability of this debt. Rather, Petitioner argues that an administrative wage garnishment, at this time, would cause a financial hardship for him. Petitioner states: "We are requesting removal of wage garnishment due to financial hardship. We cannot meet our monthly bills and mortgage payment with garnishment deduction..." (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed July 19, 2010.)

Petitioner did not file a copy of his pay statements to this Office. Using the figures submitted to the Secretary, Petitioner's gross pay for a pay period is \$1,158.72; less allowable deductions of \$197.22 (Federal \$26.75; FICA \$71.72; Medicare \$18.77; California S.D.I. \$12.72; Union Dues \$55.52) indicates a net weekly pay of \$961.50. (Dillon Decl., ¶ 10.) The Secretary's proposed repayment schedule is at the maximum amount authorized by law at 15% or \$144.23 weekly. (*Id.*)

Petitioner submitted financial documentation of essential monthly expenses showing: interest-only mortgage payment, \$1955.70; San Diego property tax bill, \$99.00; union dues, \$69.00; IRS taxes payment plan, \$201.00; Blue Cross health insurance, \$276.00; Ford Auto payment, \$290.73; Sprint Phone; \$64.00; Lakeside Water District, \$88.33; and Allstate Auto Insurance, \$83.95. The Sprint bill and the water bill are in the name of "Maureen Ross Pryor" even though there is evidence that Petitioner paid the bills. This Office will credit 50% to those payments or \$32.00 and \$44.17 respectively. The auto insurance bill is in Maureen Pryor's name alone and therefore will not be credited. Therefore, for these bills, Petitioner will be credited with essential monthly expenditures of \$2967.60.

Petitioner also filed bank statements or proof of payment, and a list stating monthly expenses of: Gas & Electric, \$262.50¹; gas/auto repairs \$400.00; Cox TV/Internet, 199.70; ATT Phone, \$85.00; Pharmacy, \$38.00; Waste service \$89.00; and Family food, household supplies, maintenance and upkeep, \$800.00. Without documentary evidence, those listed expenses routinely would not be included. However, in *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, p. 4 (July 30, 2004), this Office held that credit may be given to certain essential monthly living expenses in instances where the Petitioner does not provide bills or other documentation. In the *Loera* case, the "financial information submitted by [the] Petitioner [was found to be] generally credible, although the averages of monthly living expenses appear to be somewhat overstated." *Elva and Gilbert Loera* at p.4. Similarly, in this case, this Office will consider allowances to pay for reasonable and necessary living expenses, such as utilities and

¹ Petitioner listed Gas & Electric as "\$[175 - 350 Seasonal]." This number was averaged.

food. This Office deems that the cable and internet are not essential monthly expenses. For the other expenses this office will credit Petitioner \$1143.68.²

Petitioner also submitted bills from: a urology doctor, \$206.00; a dental provider, \$41.00; the Department of Motor Vehicles ("DMV"), \$633.00; and DMV registration renewal. Although these are important bills, they are not deemed to be necessary monthly expenses. \$25.00 monthly will be credited for these bills.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it. Petitioner's monthly disposable income of \$3846.00³ less her monthly bills and expenses of \$4,136.28 leaves a negative remaining balance per month. Therefore, Petitioner has demonstrated that the Secretary's proposed repayment schedule would cause her financial hardship. While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable pay would constitute a financial hardship sufficient to justify suspension of the collection action at the present time.

Petitioner is advised that this Office is not authorized to consider any settlement offer or any waiver of interest request on behalf of HUD. However, Petitioner may wish to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain in place indefinitely. For the reasons stated above, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment at this time. The Secretary shall not be prejudiced from seeking administrative wage garnishment if, in the future, Petitioner's income increases or his essential household expenses are reduced.



H. Alexander Manuel
Administrative Judge

November 5, 2010

² This number is derived by taking 65% of the "overstated" listed monthly essential expenditures.

³ This is the weekly pay disposable income number supplied by the Secretary multiplied by four to come up with an approximate monthly figure.