



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

In the Matter of:

DIANE ORTIZ,

Petitioner

HUDOA No. 10-M-CH-AWG109
Claim No. 5528282 LL 99244

DECISION, RULING AND ORDER UPON RECONSIDERATION

This Office previously issued a Decision and Order in this case on January 7, 2011 (the January 7th Decision"). In the January 7th Decision, this Office found that Petitioner failed to "provide evidence that would prove that the subject debt is unenforceable or not past due, or provide evidence to support any claim that repayment of the debt would create a financial hardship for her." *In re Diane Ortiz*, HUDOA No. 10-M-CH-AWG109, at p. 3 (January 7, 2011). Consequently, this Office vacated the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment and authorized the Secretary to seek garnishment of Petitioner's wages to satisfy Petitioner's debt to HUD in this case. *Id.*, at 4.

On February 7, 2011, Petitioner filed a copy of a letter dated October 7, 2010 that was sent from HUD to Petitioner's employer stating that, "[t]he Administrative Wage Garnishment issued by the U.S. Department of HUD on October 7, 2010...has been terminated and released effective as of the date of this letter." (Letter from Petitioner, filed February 7, 2011, *attach.*) Petitioner's filing was deemed to be a Motion for Reconsideration and on February 24, 2011, the Secretary filed a Secretary's Response to Motion for Reconsideration and Order to Show Cause ("Secretary's Response"). (Sec'y Response, filed February 24, 2011.)

In the Secretary's Response, the Secretary claims that the letter from HUD terminating the administrative wage garnishment was issued to Petitioner's employer in accordance with 31 C.F.R. § 285.11(f)(10)(ii), which requires that "[i]f the agency had previously issued a withholding order to the debtor's employer, the agency must suspend the withholding order beginning on the 61st day after the receipt of the hearing request and continuing until a hearing and a decision is rendered." (*Id.* at ¶ 9.) An Order, dated August 2, 2010, had previously reiterated the requirement set forth in 31 C.F.R. § 285.11(f)(10)(ii). (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated August 2, 2010.) The Secretary contends that the HUD letter terminating the administrative wage garnishment was sent to satisfy the August 2, 2010 Order. (Sec'y Response, at ¶ 9.) The Secretary further states that a Wage Garnishment Order was re-issued to Petitioner's employer on February 1, 2011. (*Id.* at 10.) The

Secretary states that "Petitioner has provided no evidence that Petitioner has paid the Note or that the Secretary has released the Petitioner from her obligation to repay the Note." (Sec'y Response, at ¶ 11.)

On February 28, 2011, this Office ordered Petitioner to file documentary evidence to prove that Petitioner has paid this debt to HUD or that HUD has released Petitioner from liability to repay the Note. (Ruling and Order, dated February 28, 2011.) This Office also stated that, "[i]f Petitioner maintains that repayment of the debt would result in financial hardship, Petitioner may file documentary evidence to prove such hardship." (*Id.*)

On March 18, 2011, Petitioner filed several documents in support of her claim that repayment of the debt in the amount proposed by the Secretary would create a financial hardship for Petitioner. (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed March 18, 2011, *attachs.*) Petitioner, however, did not file any documents to prove that Petitioner has paid this debt to HUD or that HUD has released Petitioner from liability for this debt. Accordingly, this Court's finding in the January 7th Decision that Petitioner is indebted to HUD is affirmed. This Court, therefore, **DENIES** reconsideration of its finding that Petitioner's debt to HUD is enforceable and past due. Petitioner's separate financial hardship claim, however, will be taken under consideration.

Discussion

In support of her financial hardship claim, Petitioner filed an Itemized List of Bills that listed the following monthly expenses: mortgage payment, \$686.09; food, \$300.00; toiletries, laundry soap etc, \$150.00; electricity, \$170.00; telephone, \$90.00; water, sewer and sanitation ("water bill"), \$85.00; Blue Cross / Blue Shield Health Ins. ("health insurance"), \$348.00; car insurance, \$290.00; GMAC – car payment, \$244.30; vision insurance (Family Plan), \$25.00; dental insurance (family plan), \$74.34. (*Id.*) In addition, Petitioner also listed the following "additional bills": Alta Vista Regional Hospital, \$1,500.00 (balance); Verizon Wireless, \$750.00 (balance). (*Id.*) Also included in the filing were copies of bills listed in the Itemized List of Bills. (*Id.*)

Attached to the Itemized List of Bills were copies of actual bills for Petitioner's mortgage; electricity, water, sewer and sanitation; car insurance; and car payment. (*Id.*) With the exception of the bill for Petitioner's car payment, the bills provided were either in the name of Anthony Ortiz only, or in both Petitioner's and Anthony Ortiz's names. (*Id.*) This Office ordinarily requires Petitioners to file pay statements or proof of income for all wage-earners or recipients of monies from any private or public source residing in Petitioner's household. Here, Petitioner has not provided such information for Anthony Ortiz. Accordingly, this Office finds it reasonable to attribute half of Petitioner's household expenses to Anthony Ortiz for the mortgage, electric bill, and water bill, absent documentary evidence that he is not responsible for these bills, and that Petitioner's share of these expenses total \$470.55. *See In re Sheryl Townsend*, HUDOA No. 09-M-CH-AWG22 (July 28, 2009) (finding that based on the petitioner's husband's alleged income, one-third of the petitioner's monthly household expenses should be attributed to the petitioner's husband.) In addition, although Petitioner submitted a bill for car insurance totaling \$292.50, a review of the bill showed that Petitioner's monthly payment

for car insurance is for three cars. Therefore, this Office will credit Petitioner for one-third of her car insurance bill or \$97.50.

Petitioner failed to provide adequate evidence in the form of bills or receipts for her monthly food, telephone, health insurance, vision insurance, or dental insurance. Ordinarily, this Office does not consider essential household expenses that are not supported by bills or receipts. However, credit may be given for certain essential living expenses, such as rent and food, based on Petitioner's estimates when the "financial information submitted by Petitioner [was found to be] generally credible." *In re David Herring*, HUDOA No. 07-H-NY-AGW53 (July 28, 2008) (quoting *In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Therefore, in accordance with *Herring and Loera*, this Office will credit Petitioner with her half of these monthly expenses and calculate Petitioner's share of household expenses as being \$1,151.52. Petitioner's balance of \$1,500.00 with Alta Vista Regional Hospital will not be included in the calculation because Petitioner has not provided documentary evidence proving its existence as a recurring and essential monthly expense. Similarly, this Office will also not include Petitioner's monthly expense for toiletries and her \$750.00 balance with Verizon Wireless. See *In re Charles Chumley*, HUDOA No. 09-M-CH-AWG 09 (April 6, 2009) (finding that the petitioner's cable television and cellular phone services would not be included as a monthly household expense as such expenses are not deemed to be essential).

A letter from Petitioner's employer states that Petitioner's weekly pay totals \$400.00. (Pet'r's Doc. Evid., *attach.*) The Secretary is authorized to garnish up to 15% of a debtor's disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay, including salary and bonuses. 31 C.F.R. § 285.11(i)(2)(i). Since the letter from Petitioner's employer does not specify the amount of withholdings from Petitioner's pay, this Office estimates that Petitioner's disposable pay after deducting taxes and other federal withholdings totals \$280.00 weekly or \$1,120.00 monthly. Petitioner's disposable pay of \$1,120.00 less her share of essential household living expenses of \$1,249.02 leaves Petitioner with a negative balance of -\$129.02 monthly. Although this Office has the authority to order garnishment at a lesser rate based on the record before it, I find that garnishment by the Secretary at any rate would result in a financial hardship on Petitioner. See 24 C.F.R. § 285.11(k)(3).

RULING AND ORDER

For the reasons set forth above, Petitioner's Motion for Reconsideration is **DENIED**, in part and **GRANTED**, in part. The January 7th Decision (attached hereto) is **AFFIRMED**. This Office finds the debt that is the subject of this proceeding to be past-due and enforceable in the amount alleged by the Secretary. This Office also finds that Petitioner has filed sufficient documentary evidence to show that a garnishment of her disposable income, in any amount and at this time, would cause Petitioner a financial hardship. Therefore it is

ORDERED that the wage garnishment order authorized by the Decision, *In re Diane Ortiz*, HUDOA No. 10-M-CH-AWG109, is hereby **MODIFIED** as of the date of this Decision, Ruling and Order and a wage garnishment order shall not be imposed at this time. It is

FURTHER ORDERED that the Secretary is **STAYED** from seeking collection of this outstanding obligation by means of administrative wage garnishment, indefinitely. The Secretary shall not be prejudiced from seeking administrative wage garnishment if, in the future, Petitioner's income increases or her essential household expenses are reduced. It is

FURTHER ORDERED that Petitioner shall fully cooperate with any future effort(s) by the Secretary to obtain information regarding Petitioner's income, necessary living expenses, and related financial data. Petitioner's failure to promptly provide this information to the Secretary, upon request, may result in a revocation or rescission of the Stay of Referral of the Wage Garnishment Order authorized in this case, and immediate imposition of an Administrative Wage Garnishment against Petitioner.



H. Alexander Manuel
Administrative Judge

May 24, 2011