



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

In the Matter of:

**Margaret Franks**

Petitioner.

HUDOA No. 10-M-CH-AWG39  
Claim No. 780711609

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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"). 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. 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) and (f)(10), on January 20, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

### **Background**

On February 4, 2004, Petitioner executed and delivered a Note, Disclosure, and Security Agreement ("Note") to Telco Triad Community Credit Union ("Telco") in the amount of \$13,356.00 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat."), filed January 29, 2010, ¶ 1, Ex. 1.) When Petitioner failed to make payment on the Note as agreed, on or about April 14, 2009, Telco assigned the Note to the United States of America under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 2, Ex. 1; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated January 28, 2010, ¶ 3.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 3, Dillon Decl., ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$9,336.62 as the unpaid principal balance as of December 31, 2009;
- (b) \$586.24 as the unpaid penalty balance as of December 31, 2009; and
- (c) \$35.33 as administrative costs balance as of December 31, 2009.

(Sec'y Stat., ¶ 4, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated December 31, 2009 was sent to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) 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, but did not enter such an agreement. (Sec'y Stat., ¶ 6, Dillon Decl., ¶ 6.) Based on a review of Petitioner's pay statement for the period ending January 4, 2010, the Secretary proposes a weekly repayment schedule of \$55.36, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 9, Dillon Decl., ¶ 8, Ex. 3.)

### **Discussion**

Petitioner challenges the existence and enforceability of the debt by arguing that (1) she does not owe the full amount of the debt; and (2) an administrative wage garnishment would cause financial hardship. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed January 19, 2010.)

First, Petitioner claims she does not owe the full amount of the debt: "The amount was paid down to less than \$10,000.00." (Pet'r Hr'g Req.) Petitioner, however, has not submitted any documentary evidence that proves that the amount of the debt alleged by the Secretary is incorrect. Although the Secretary has the initial burden of proof to show the existence and amount of the debt, Petitioner, thereafter, must show by a preponderance of the evidence that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(i), (ii). While the Secretary has met his initial burden of proof, Petitioner has failed to show by a preponderance of the evidence that the amount of the debt is incorrect.

Second, Petitioner claims that the Secretary's proposed repayment schedule would result in financial hardship for Petitioner: "I was without work for 2 ½ yrs. I started full time July 2009, I'm not able to pay this in full, and am trying to get [ ]over[.]" (Pet'r Hr'g Req.) In support of her financial hardship claim, Petitioner submitted a sworn declaration of financial hardship. (Petitioner's Consumer Debtor Financial Information ("Pet'r Info."), filed February 22, 2010.)

According to Petitioner's Consumer Debtor Financial Information ("Information"), Petitioner's gross pay totaled \$1,950 monthly. (*Id.*) The Secretary is authorized to garnish "up to 15% of the debtor's disposable pay," which is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld...[including] amounts for deductions such as social security taxes and withholding taxes...." 31 C.F.R. §§ 285.11(c) and (i)(2)(i)(A). Because Petitioner has not provided sufficient information for calculating allowable deductions, I will assume that Petitioner has a disposable income of \$1,950 monthly. (Pet'r Info.)

Petitioner asserts through her Information that her essential monthly household expenses includes Telco Credit Union car payment, \$185; Wells Fargo Credit Card, \$200; rent/mortgage \$250; gasoline/auto repairs, \$205; natural gas \$200; medical expenses, \$35; trash and water, \$70; phone, \$50; and automobile insurance, \$75. (*Id.*) Petitioner also provided documentary evidence of cable/satellite television, \$70; clothing, \$100; and food, \$400. The payments for cable and clothing, however, will not be credited towards Petitioner's essential monthly expenses because Petitioner has not submitted sufficient documentary evidence to establish that the expenses are essential living expenses. Because the expense of \$400 for food is excessive, Petitioner will be credited with \$200 for food instead. These essential household expenses total \$1,470. (*Id.*)

Petitioner's monthly disposable income of \$1,950 less her monthly bills and expenses of \$1,470, leaves Petitioner with a remaining balance of \$480. A 15% garnishment rate of Petitioner's current disposable income would equal approximately \$292.50 monthly, and leave Petitioner with a monthly disposable income of \$187.50. 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. After including amounts to cover Petitioner's essential expenses, I find that an order for administrative wage garnishment of Petitioner's disposable income at the rate of 15% would enable Petitioner to meet expenses to cover basic household needs. Thus, I find that Petitioner has not submitted sufficient documentary evidence to substantiate her claim that administrative wage garnishment of her disposable pay, in the amount sought by the Secretary, would cause

financial hardship. Furthermore, according to the Secretary, because Petitioner verified via telephone on January 25, 2010 that she was not involuntarily separated from her previous employment, the exclusions from the garnishment regulation of 31 C.F.R. § 285.11 does not apply as the fact that Petitioner has not been employed at her current job for at least twelve months is not relevant.

**ORDER**

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

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.



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H. Alexander Manuel  
Administrative Judge

July 14, 2010