



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

In the Matter of:

Carletha Hill,

Petitioner

HUDOA No. 10-M-NY-AWG113
Claim No. 780135023

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Pro Se

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DECISION AND ORDER

On July 29, 2010, 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 August 13, 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.

Background

On August 13, 1996, Petitioner executed and delivered a Home Improvement Installment Contract & Disclosure Statement ("Note") to Home Improvement Consultants, Inc. in the amount of \$24,860.00, which 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 October 6, 2010, ¶ 2, Ex. A.) On September 13, 1996, the Note was assigned by Home Improvement Consultants, Inc. to Mego Mortgage Corporation. (*Id.* at ¶ 3, Ex. A, p.2.) The Note was then assigned by Mego Mortgage Corporation to First Trust of New York National Association. (*Id.* at ¶ 4, Ex. B.)

Petitioner failed to make payment on the Note as agreed. (*Id.* at ¶ 5.) Consequently, in accordance with 24 C.F.R. 201.54, on April 12, 1999, First Trust of New York National Association assigned the Note to the United States of America. (*Id.*) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 6.) 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) \$23,133.43 as the unpaid principal balance as of August 31, 2010;
- (b) \$867.60 as the unpaid interest on the principal balance at 5% per annum through August 31, 2010; and
- (c) interest on said principal balance from September 1, 2010 at 5% per annum until paid.

(Sec'y Stat., ¶ 6; Ex. C, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center ("Porter Decl."), ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 24, 2010 was sent to Petitioner. (Sec'y Stat., ¶ 7; Porter 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. (Sec'y Stat., ¶ 8; Porter Decl., ¶ 6.) As of September 1, 2010, Petitioner has not entered into a written repayment agreement in response to the notice. (*Id.*)

As of September 7, 2010, Petitioner has not complied with the Secretary's request to provide proof of income. (Sec'y Stat., ¶ 9; Porter Decl., ¶ 7.) Accordingly, the Secretary states that Petitioner's repayment proposal of \$100.00 a month is not acceptable to HUD. (Sec'y Stat., ¶ 10; Porter Decl., ¶ 8.) The Secretary submits that a reasonable amount to garnish is \$322.77 per month based on the terms of the Note, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 11; Porter Decl., ¶ 9.)

On August 26, 2005, Administrative Judge Jerome M. Drummond issued a Decision and Order in Petitioner's Administrative Wage Garnishment appeal finding the debt legally enforceable in the amount claimed by the Secretary and authorizing the Secretary to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law. (Sec'y Stat., ¶ 12; Porter Decl., ¶ 10, Ex. A.)

Discussion

Petitioner asserts that the debt that is the subject of this proceeding may not be collected because the proposed administrative wage garnishment would cause her financial hardship. Petitioner writes, "I don't have enough income." (Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed July 29, 2010.) Petitioner writes later, "This is a big hardship on my family and I am asking if you would please consider a 5% or 6% instead of 15% of my income." (Petitioner's Documentary Evidence ("Pet'r Evid."), filed September 29, 2010.)

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, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause financial hardship. On September 29, 2010, Petitioner filed financial statements that included copies of Petitioner's bills and payments, receipts, and bi-weekly pay statements. (*Id.*) Petitioner also included a document showing that she is receiving food stamp benefits in the amount of \$223.00 from October 2010 through February 2011. (*Id.*)

Petitioner's two most recent bi-weekly pay statements for the pay periods from August 20, 2010 to September 2, 2010 and from September 3, 2010 to September 16, 2010 indicate that her bi-weekly gross pay was \$1,100.00. (*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). After subtracting allowable deductions for Medicare, Social Security, withholding tax and other deductions, Petitioner is left with a disposable income of \$856.06 bi-weekly or \$1712.12 monthly. (*Id.*)

The documentary evidence filed by Petitioner shows records of payment for the following essential household expenses for which this Office will credit Petitioner: mortgage \$801.13 monthly; water, sewer, garbage and stormwater management, \$115.11 monthly average; automobile fuel, \$53.00 monthly average; and medical expenses, \$35.00 monthly average. Petitioner also provided documentary evidence of electricity, \$411.23 past-due amount; phone, \$147 monthly; groceries, \$288.62 monthly average, which are deemed excessive. Therefore, this Office will reduce the amounts for the expenses to \$260, \$100, and \$250 respectively. With this reduction, Petitioner's essential household expenses total \$1,614.24 monthly.

Petitioner's claims regarding the following expenses are not credited by this Office because Petitioner has not submitted sufficient documentary evidence to establish that the expenses are essential: cable and internet, \$143.91; insurance for school sports, \$6, and cash

advance transactions of various amounts. As a result, Petitioner's monthly disposable income of \$1,712.12 less her monthly bills and expenses of \$1,614.24 leaves a remaining balance of \$97.88 per month.

A 15% garnishment rate of Petitioner's bi-weekly disposable income would equal \$256.82 and exceed Petitioner's disposable pay by \$158.94. A wage garnishment of 10%, or \$171.21 monthly, would still exceed Petitioner's disposable pay by \$73.33. A garnishment rate of 5%, or \$85.61 monthly, would leave Petitioner with \$12.27 each month.

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, particularly in cases where financial hardship is found. Upon due consideration, this Office finds that the Petitioner has submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount sought by the Secretary, would cause a financial hardship. To impose an administrative wage garnishment against the Petitioner, at any rate, would be ineffective and unproductive at this time.

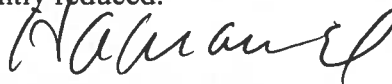
While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship that justifies forbearance of collection action at this time.

Finally, Petitioner proposes the settlement offer of 5% or 6% of her income rather than 15%. (*Id.*) 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 Mr. 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 the 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 the outstanding debt in this case by means of administrative wage garnishment at this time. However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or her household expenses are sufficiently reduced.



H. Alexander Manuel
Administrative Judge

December 6, 2010