



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

In the Matter of:

CLYDE J. WALTERS, JR.

Petitioner

HUDOA No. 10-M-NY-AWG49
Claim No. 77-0976840-0A

Clyde J. Walters, Jr.
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For Petitioner

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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 February 17, 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 May 15, 1995, Petitioner executed and delivered to the Secretary a Note ("Note") to Seacoast Equities, Inc. in the amount of \$25,000, 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 March 5, 2010, ¶ 2, Ex. A.) On the same day, the Note was assigned to The First National Bank of Keystone. (*Id.* at ¶ 3, Ex. B). Thereafter, the Note was assigned to First Bank National Association, as Trustee, followed by assignment to Coast Partners Acceptance Corporation. (*Id.* at ¶¶ 4-5, Ex. A, C). After default by Petitioner, the Note was assigned to HUD under the regulations governing the Title I Insurance Program. (*Id.* at ¶ 6, Ex. D; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 3.) HUD has attempted to collect on the claim from Petitioner, but Petitioner remains delinquent. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 4.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is currently in default on the Note and that Petitioner is indebted to HUD in the following amounts:

- (a) \$24,727.49 as the unpaid principal balance as of February 16, 2010;
- (b) \$17,220.10 as the unpaid interest on the principal balance at 5.0% per annum through February 16, 2010; and
- (c) interest on the principal balance from February 17, 2010, at 5.0% per annum until paid.

(Sec'y Stat., ¶ 7; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated March 17, 2009, was mailed to Petitioner. (Sec'y Stat., ¶ 8; 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 terms acceptable to HUD. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 6.) Petitioner failed to enter into a written repayment agreement. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 6.) On January 14, 2010, HUD issued a Wage Garnishment Order to Petitioner's employer, and, pursuant to the order, Petitioner's pay has been garnished once in the amount of \$227.27. (Sec'y Stat., ¶¶ 10, 11; Dillon Decl., ¶¶ 7, 9, Ex. A.) The Secretary proposes garnishment of \$233.30 bi-weekly or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 12, Dillon Decl., ¶ 8.)

Discussion

Petitioner asserts that the debt that is the subject of this proceeding may not be collected by administrative wage garnishment for two reasons: (1) wage garnishment would cause him financial hardship; and (2) such garnishment is barred by a statute of limitations.

First, Petitioner states, "The enforcement of this garnishment will create a financial hardship on my family of great magnitude. I/we live 'payday to payday' and do not have the ability to pay." (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed February 5, 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 March 19, 2010, this Court ordered Petitioner to file documentary evidence no later than April 16, 2010, to prove that "repayment of this alleged debt would create a financial hardship" (Order, dated March 19, 2010.)

On March 16, 2010 and April 8, 2010, Petitioner filed financial statements that included copies of Petitioner's bills and payments, receipts, and a bi-weekly pay statement. (Financial Statements from Petitioner ("Pet'r Mar. Stat."; "Pet'r Apr. Stat."), filed March 16, 2010 and April 8, 2010.) Petitioner's bi-weekly pay statement for the one pay period beginning February 10, 2010 and ending February 23, 2010, where Petitioner earned his current annual salary of \$52,181.48, indicates that his bi-weekly gross pay was \$2,006.98. (Pet'r Mar. Stat.) Petitioner's bi-weekly net disposable income for the same period was \$1,182.80. (*Id.*)

The documentary evidence submitted by Petitioner shows records of payment for the following essential household expenses for which this office will credit Petitioner: mortgage \$900.00 (monthly); water, \$105.00 (monthly average); car insurance, \$67.00 (monthly); and fuel, \$200.00 (monthly average). The essential household expenses total \$1,272.00 per month.

Petitioner's claims regarding the following expenses are not credited by this Office because Petitioner has not submitted sufficient documentary evidence to establish either a recent record of payment or the amount of ongoing expenses, or that the expenses are essential: hot water (the bill does not identify Petitioner by name or address), mother's TV (non-essential), cell phone (non-essential), IRS repayment at \$25.00 per pay period (no proof of payments made), haircuts (non-essential), veterinary (non-essential), vehicle expenses (no proof of payments made) and medical expenditures (no proof of payments made).

This Office will, however, credit Petitioner a reasonable amount for phone service, for food, clothing and other items, and for electricity equal to \$57.00, \$576.00, and \$268.00 per month respectively.

With the amount allotted for phone service, food, clothing and other items, and electricity, Petitioner's essential household expenses total \$2,173.00 per month. Petitioner's monthly disposable income of \$2,365.60 less his monthly bills and expenses of \$2,173.00 leaves a remaining balance of \$192.60 per month or \$96.30 bi-weekly. A 15% garnishment rate of

Petitioner's bi-weekly disposable income would equal \$177.42¹ and exceed Petitioner's disposable pay by \$81.12. A wage garnishment of 10%, or \$118.28 monthly, would still exceed Petitioner's disposable pay by \$21.98. A garnishment rate of 5%, or \$59.14 monthly, would leave Petitioner with \$37.16 each month.

This Office has the authority to order garnishment at a lesser rate based upon the record before it. *See* 31 C.F.R. § 285.11(k). Petitioner has submitted sufficient documentary evidence to substantiate his claim that the administrative wage garnishment of his disposable pay would cause him financial hardship. I find that an administrative wage garnishment at the rate of 5% of Petitioner's disposable pay would enable Petitioner to meet his essential household expenses.

Second, Petitioner claims that HUD is barred from collecting the alleged debt by the statute of limitations. Petitioner specifically cites 28 U.S.C. § 2415 for the proposition that HUD must collect debts within six years from the date of default to institute proceedings against Petitioner. (Pet'r Mar. Stat. ¶ 11.) However, Petitioner's reliance on this statute is misplaced. The United States Supreme Court decided in 2006 that the statute of limitations set forth by 28 U.S.C. § 2415(a) applies only to judicial proceedings and not to administrative proceedings. BP America Prod. Co. v. Burton, 127 S. Ct. 638, 643 (2006). Accordingly, the Court held that the statute did not bar the Government's administrative collection proceedings. *Id.* at 649.

After the decision in BP America Prod. Co. was issued, this Office decided in Edward Tsagris, HUDOA No. 08-H-CH-AWG09, that "31 U.S.C. § 3720D is the controlling statute that authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States Government." Edward Tsagris, HUDOA No. 08-H-CH-AWG09 (May 7, 2008) at 4. Since 31 U.S.C. § 3720D does not contain a time limitation, this Office decided that 28 U.S.C. § 2415(a) must be construed as "authorizing administrative wage garnishments without applying any time restriction for the commencement of a garnishment action..." *Id.* Accordingly, I find that the Secretary's claim is not barred by the statute of limitations set forth by 28 U.S.C. § 2415 (a).

ORDER

For the reasons set forth above, 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.

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

¹ The Secretary's proposed repayment schedule is \$233.30 bi-weekly, a 15% garnishment rate based on Petitioner's bi-weekly pay statement for a different pay period, beginning January 13, 2010 and ending January 26, 2010. Because Petitioner's annual salary of \$52,181.48 is the same on both pay statements and the pay statement for the pay period beginning February 10, 2010 and ending February 23, 2010, filed by Petitioner on March 16, 2010, is more current, this Office will apply the more current pay statement.

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 5% of Petitioner's disposable pay.

A handwritten signature in black ink, appearing to read "H. Alexander Manuel", written over a horizontal line.

H. Alexander Manuel
Administrative Judge

June 8, 2010