



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

In the Matter of:

Mary K. Chamberlain,
Petitioner

HUDOA No. 11-H-CH-AWG131
Claim No. 7-8008935-2 0B

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Pro se

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For the Secretary

DECISION AND ORDER

On August 16, 2011, 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 Court 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 23, 2011, this Court 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 withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral, dated Aug. 23, 2011.)

Background

On July 26, 1995, Petitioner executed and delivered a Promissory Note ("Note") to Thermal Exteriors in the amount of \$10,444.10 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") ¶ 1, filed Sept. 19, 2011; Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Porter Decl.") ¶ 3, dated Sept. 1, 2011.) Thermal Exteriors assigned its interest in the Note to Fed One Bank. (Sec'y Stat. ¶ 1.) After Petitioner defaulted on the loan, United National Bank, formerly known as Fed One Bank, assigned the Note to the United States of America on October 10, 1998 under the regulations governing the Title I Insurance Program. (Sec'y Stat. ¶ 2; Porter Decl. ¶ 3.)

HUD has attempted to collect the amounts due under the Note but Petitioner remains in default. (Sec'y Stat. ¶ 3; Porter Decl. ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$8,207.21 as the unpaid principal balance as of August 31, 2011;
- (b) \$48.10 as the unpaid interest on the principal balance at 5.0% per annum through August 31, 2011; and
- (c) interest on said principal balance from September 1, 2011, at 5.0% per annum until paid.

(Sec'y Stat. ¶ 4; Porter Decl. ¶ 4.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated April 20, 2010, was sent to Petitioner. (Sec'y Stat. ¶ 5; Porter Decl. ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was offered the opportunity to enter into a repayment agreement. (Sec'y Stat. ¶ 6; Porter Decl. ¶ 6.) As of September 1, 2011, Petitioner has not entered into such repayment agreement. (Sec'y Stat. ¶ 6; Porter Decl. ¶ 6.)

Based on the issuance of the Wage Garnishment Order, fourteen payments totaling \$4,568.90 have been received and posted to Petitioner's account. (Sec'y Stat. ¶ 8; Porter Decl. ¶ 8.) These payments are reflected in the balance described above. (Sec'y Stat. ¶ 8; Porter Decl. ¶ 8.) The Secretary proposes an administrative wage garnishment in the amount of 15% of disposable pay, resulting in a monthly repayment of \$352.72. (Sec'y Stat. ¶ 10; Porter Decl. ¶ 10.)

Discussion

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt the Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Petitioner does not object to the enforceability of the

debt, but states, "I am unable to pay my bills and medical expenses due to the amount being withheld from my check for this debt." (Pet'r's Hr'g Req., filed Aug. 16, 2011.)

In support of her financial hardship claim, Petitioner provided the Court with a copy of a pay statement and copies of various expenses, including medical expenses, rent, phone/cable/internet bill, car loan, car insurance, and an electric bill. (Pet'r's Hr'g Req., Attachments.) Petitioner's monthly pay statement for the pay period ending June 30, 2011 indicates that Petitioner's gross monthly pay is \$3,054.60. 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. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, \$298.04; social security, \$122.64; medical insurance, \$125.00; and Medicare, \$42.34, Petitioner is left with a monthly disposable income of \$2,466.58. (Pet'r's Hr'g Req.)

Petitioner submitted documentary evidence of the following essential monthly household expenses: rent, \$850; electric, \$245.59; internet/cable/phone, \$144.44; prescriptions, \$112.33; car insurance, \$175.32; car loan, \$273.81; and medical bills, \$158.35 (average). (Pet'r's Hr'g Req.) Since this Court does not consider cable and internet to be essential monthly household expenses, Petitioner's internet/cable/phone bill will be reduced to \$21.00 to reflect only the cost of Petitioner's phone.

Petitioner also alleged an additional expense for food, \$200.00, but failed to file proof of payment to support this additional expense. (Pet'r's Hr'g Req.) However, this Court has maintained that credit may be given for certain essential monthly living expenses, such as expenses for food, shelter, or utilities, in instances where the listed monthly expenses provide reasonable and necessary living expenses, even though proofs of payment have not been provided. *David Herring*, HUDOA No. 07-H-NY-AWG53, at 4-5 (July 28, 2008); *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, at 4 (July 30, 2004). Likewise, in this case, this Court will consider allowances to pay for reasonable and necessary living expenses, such as food, utilities, and mortgage. As a result, this Court also will credit the amount alleged for Petitioner's monthly expense for food, \$200.00. Therefore, based upon the evidence provided by Petitioner, Petitioner's essential monthly household expenses total \$2,036.40.

Petitioner's disposable income of \$2,466.58 exceeds her monthly living expenses of \$2,036.40 by \$430.18. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$369.99, leaving Petitioner with a positive balance of \$60.19. At a 10% garnishment rate, Petitioner's monthly garnishment amount would be \$246.66, leaving Petitioner with a positive balance of \$183.52. This Court has the authority to order garnishment at a lesser rate based upon the record before it. *See* 31 C.F.R. § 285.11(k)(3). While the Secretary has successfully proven that the alleged debt is legally enforceable against Petitioner, Petitioner has likewise submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount proposed by the Secretary, would in fact cause financial hardship. Therefore, I find that an administrative wage garnishment of Petitioner's disposable income at a lesser rate of 10% would enable Petitioner to meet her legal obligation on the debt that is the subject of this

proceeding, and to cover any other miscellaneous, non-essential expenses incurred by Petitioner on a monthly basis.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 10% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

October 28, 2011