



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

In the Matter of:

Dayna Al-Shammary,
Petitioner

:
:
: HUDOA No. 11-H-CH-AWG75
: Claim No. 721006611
:

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Pro se

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For the Secretary

DECISION AND ORDER

On April 1, 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. 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 an undue 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), on April 6, 2011, this Court stayed the issuance of a wage withholding 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 ("Notice of Docketing"), dated April 6, 2011.)

Background

On February 6, 2003, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") and Security Instrument to secure a partial claim paid on Petitioner's behalf by the Secretary to pay the arrearages on Petitioner's FHA-insured mortgage and avoid the foreclosure of Petitioner's home. (Secretary's Statement ("Sec'y Stat.") ¶ 1, Ex. 1, filed April 21, 2011; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, Financial Operations Center in HUD ("Sautter Decl.") ¶ 4, dated April 20, 2011.) By the terms and conditions of the Note, the debt becomes due and payable when the borrower pays the primary Note in full. (Sec'y Stat. ¶ 2; Sautter Decl. ¶ 4.) On or around January 10, 2006, the FHA Insurance on the primary mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec'y Stat. ¶ 4; Sautter Decl. ¶ 4.)

HUD has attempted to collect the amounts due on the Note, but Petitioner remains delinquent. Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$5,082.14 as the unpaid principal balance as of March 30, 2011;
- (b) \$0.00 as the unpaid interest on the principal balance at 1% per annum through March 30, 2011; and
- (c) interest on said principal balance from April 1, 2011 at 1% per annum until paid.

(Sec'y Stat. ¶ 6; Sautter Decl. ¶ 5.)

A Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings dated January 13, 2011 was mailed to Petitioner. (Sec'y Stat. ¶ 7; Sautter Decl. ¶ 7.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement, but declined to do so. (Sec'y Stat. ¶ 8; Sautter Decl. ¶ 8.) As of April 20, 2011, Petitioner has not entered into a written repayment agreement based on the January 13, 2011 Notice. (Sec'y Stat. ¶ 8; Sautter Decl. ¶ 8.) Petitioner remitted three separate payments, in \$50.00, \$100.00, and \$25.00 increments, together totaling \$175.00, only after the referral had been made to the Department of Treasury. (Sec'y Stat., ¶ 10, Exh. A.) These payments were returned to Petitioner because Petitioner never entered into a voluntary repayment agreement with HUD. (*Id.*) HUD has received garnishments from Petitioner on March 7, 2011 for \$239.01 and March 21, 2011 for \$239.82. (Sautter Decl. ¶ 10.) Several attempts were made to obtain Petitioner's current pay stub. (*Id.*) As of April 20, 2011, Petitioner has not provided HUD with his current pay stub. (*Id.*)

The Secretary's proposed repayment schedule is 15% of Petitioner's disposable pay, or \$239.82 bi-weekly. (Sec'y Stat. ¶ 11; Haspel 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 objects to the proposed administrative wage garnishment based on financial hardship. (Pet’r’s Hr’g Req., filed April 1, 2011.)

In support of her financial hardship claim, Petitioner filed sufficient proofs of payment of essential household expenses. (Petitioner’s Documentary Evidence (“Pet’r’s Doc. Evid.”), filed July 5, 2011.) However, Petitioner has failed to file copies of her pay statements for the past 12 months.

Without evidence of Petitioner’s income, this Court is unable to determine whether the Secretary’s proposed garnishment amount would pose a financial hardship to Petitioner. Pursuant to 31 C.F.R. § 285.11, in determining whether the Secretary’s proposed garnishment amount would pose a financial hardship, this Court must determine Petitioner’s disposable income defined as:

that part of the debtor’s compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining 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.

See 31 C.F.R. § 285.11(c).

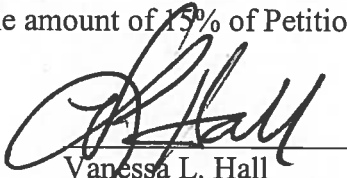
The record does not reflect that Petitioner submitted sufficient documentary evidence of her monthly disposable income. This Court ordered Petitioner on three separate occasions to file the necessary documentary evidence to prove her financial hardship claim. Each Order specifically stated that Petitioner file “copies of her pay statements for the past 12 months.” (Notice of Docketing, Order and Stay of Referral, dated April 6, 2011; Order to Pet’r, dated May 19, 2011; Order to Show Cause, dated June 10, 2011.) Petitioner failed to comply with any of the Orders. Without Petitioner’s pay statements as proof of her monthly disposable income, this Court is unable to determine whether Petitioner’s monthly expenses exceed her monthly disposable income to the extent that it establishes financial hardship. Mere speculation without supporting documentation is insufficient when determining whether a Petitioner’s financial hardship claim is warranted. *See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-7300 (July 3, 1996)) (the Court maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.”). Therefore, Petitioner’s claim of financial hardship fails for want of proof.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral in 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 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge

October 13, 2011