



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

In the Matter of:

Brian M. Butler,

Petitioner

:
:
: HUDOA No. 11-H-CH-AWG90
: Claim No. 780712193

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Pro se

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For the Secretary

DECISION AND ORDER

On April 19, 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 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 April 19, 2011, 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 withholding

order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral, dated April 19, 2011.)

Background

On September 12, 2006, Petitioner executed and delivered a Note and Addendum to Promissory Note to Domestic Bank in the amount of \$25,000 (the "Note"). (Secretary's Statement ("Sec'y Stat") ¶ 1, filed May 18, 2011; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 1, dated May 16, 2011.) After Petitioner defaulted, the Note was assigned to HUD by Domestic Bank under the regulations governing the Title I Insurance Program. (Sec'y Stat. ¶ 2.)

Petitioner is currently in default on the Note. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.) The Secretary has made efforts to collect from Petitioner other than by administrative wage garnishment but has been unsuccessful. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.) The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$23,981.64 as the unpaid principal balance as of April 30, 2011;
- (b) \$119.94 as the unpaid interest on the principal balance at 3% per annum through April 30, 2011; and
- (c) interest on said principal balance from May 1, 2011, at 3% per annum until paid.

(Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated March 18, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 6; 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 under terms agreeable to HUD. (Sec'y Stat. ¶ 7; Dillon Decl. ¶ 6.) Petitioner has not entered into a written repayment agreement in response to the Notice of Intent. (Sec'y Stat. ¶ 7; Dillon Decl. ¶ 6.)

Several attempts were made to obtain Petitioner's current pay stub. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7.) As of May 16, 2011, Petitioner has not provided HUD with a current pay stub. (Sec'y Stat. ¶ 7; Dillon Decl. ¶ 7.) The Secretary's proposed repayment schedule is \$669.49 per month, or 15% of Petitioner's disposable income, which will liquidate the debt in approximately three years as recommended by Federal Claims Collection Standards. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7.) On February 25, 2011, a Treasury Offset Program payment was received from Petitioner in the amount of \$4,057.00. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 8.) This payment is reflected in the debt balanced referenced above. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 8.)

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. In fact, Petitioner states that, "I want to pay off my debt. I want to pay what I owe." (Pet'r's Hr'g Req., filed April 19, 2011.) Petitioner instead objects to the proposed administrative wage garnishment because it would result in financial hardship. (*Id.*) Petitioner

states that his family's "energy costs were over \$1,600.00 for the months of December, January and February" and that "we have fallen behind on our payments" since "my wife and I lost our jobs on the same week." (*Id.*)

In support of his financial hardship claim, Petitioner provided this Office with copies of a bi-weekly paystub, a Debt Resolution Program Financial Statement, energy bills, and a bank statement. (Petitioner's Documentary Evidence ("Pet'r's Evid."), filed July 7, 2011, Attachments.) Petitioner's bi-weekly paystub for the pay period of June 11, 2011 to June 24, 2011 indicates that Petitioner's gross bi-weekly pay is \$1,526.25, or \$3,052.50 monthly. 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, \$350.00; Medicare, \$44.26; state tax, \$132.78; and social security, \$128.20, Petitioner is left with a monthly disposable income of \$2,397.26. (Pet'r's Evid.)

While Petitioner claims that he and his wife have lost their jobs, Petitioner submitted a Debt Resolution Program Financial Statement that listed his wife as having a monthly income of \$800.00. On September 14, 2011, this Office ordered Petitioner to file additional documentary evidence to clarify either the amount of \$800.00 as listed on the Debt Resolution Program Financial Statement, or to verify the employment status of Petitioner's wife. (Order for Clarification, filed Sept. 14, 2011.) Petitioner has failed, to date, to comply with that Order. As a result, this Office will impute to Petitioner's disposable monthly income the \$800.00 amount in monthly income received by Petitioner's wife. Therefore, Petitioner's monthly disposable income now totals \$3,197.26.

Petitioner submitted documentary evidence for gas/electric bills that were averaging \$504.25, as a monthly expense. (Pet'r's Evid.) Petitioner also alleged other additional expenses for: mortgage, \$800.00; food, \$600.00; heat, \$175.00; telephone, \$150.00; and other, \$300.00, but failed to file proofs of payment to support these additional expenses. (*Id.*) However, this Office 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).

Similarly, in this case, this Court will consider allowances to pay for reasonable and necessary living expenses, such as food, utilities, and mortgage. Therefore, this Court also will credit the amounts alleged for monthly living expenses for: mortgage, \$800.00; heat, \$175.00; telephone, \$150.00, and food, \$600.00. Petitioner will not be credited with the unknown claimed expense of "Other," because it is obviously unknown and unsubstantiated. As a result, based upon the evidence provided by Petitioner, Petitioner's essential monthly household expenses total \$2,229.25

Petitioner's disposable income of \$3,197.26 exceeds his monthly living expenses of \$2,229.25 by \$968.01. A 15% garnishment rate of Petitioner's current monthly disposable

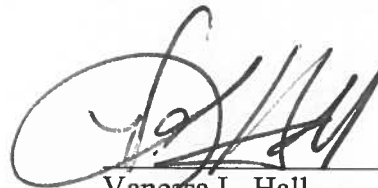
income would result in a garnishment amount of \$479.59 per month and would leave Petitioner with a positive balance of \$488.42, an amount deemed sufficient to cover any other miscellaneous, non-essential expenses incurred by Petitioner. As a result, Petitioner failed to meet his burden of establishing, by a preponderance of the evidence, that the Secretary's proposed repayment schedule would create a financial hardship for him. Therefore, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

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 15% of Petitioner's disposable income.

A handwritten signature in dark ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge

October 28, 2011