



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

In the Matter of:

Martino Fleming,

Petitioner

HUDOA No. 11-H-NY-AWG86
Claim No. 780720873

Martino Fleming
7324 Kinglet Place
Philadelphia, PA 19153

Pro se

Julia Murray, Esq.
US Department of Housing and
Urban Development
Office of Assistant General Counsel
for New York/New Jersey Field Offices
26 Federal Plaza, Room 3237
New York, NY 10278

For the Secretary

DECISION AND ORDER

On April 18, 2011, Petitioner filed a request for 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 are designated to determine whether the HUD Secretary may collect the alleged debt by means of administrative wage garnishment if 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 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 19, 2011, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), dated April 19, 2011.)

Background

On August 22, 2006, Petitioner executed and delivered a Direct Installment Loan Disclosure and Note to PNC Bank, N.A., in the amount of \$24,476.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (*Id.*) Petitioner failed to make payment on the Note as agreed. On March 29, 2010, PNC Bank, N.A. assigned the Note to HUD in accordance with 24 C.F.R. § 201.54. (*Id.*, at ¶ 5.; Ex. C., Declaration of Brian Dillon, (“Dillon Decl.”), Director of Asset Recovery Division, HUD’s Financial Operations Center, ¶ 3, filed May 13, 2011.)

HUD has attempted to collect on the Note but has been unsuccessful. (Sec’y Stat., ¶ 6; Dillon Decl. ¶ 4.) The Secretary has filed a statement alleging that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$16,981.73 as the unpaid principal balance as of April 30, 2011;
- (b) \$14.15 as the unpaid principal balance at 1% per annum through April 30, 2011; and
- (c) interest on said principal balance from May 1, 2011 at 1% per annum until paid.

(Sec’y Stat. ¶ 6; Dillon Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment (“Notice”), dated January 18, 2011, was sent to Petitioner. (Sec’y Stat. ¶ 7; Dillon Decl. ¶ 5.) A Wage Garnishment Withholding Order was issued to Petitioner’s employer on February 18, 2011 with instructions to garnish 15% of Petitioner’s bi-weekly pay. Two payments of \$230.65 apiece have been collected¹. (Sec’y Stat., ¶ 10; Dillon Decl., ¶ 10.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule would cause him financial hardship. Here, Petitioner does not contest the existence or amount of the debt claimed by the Secretary. (Petitioner’s Hearing Request (“Pet’r’s’ Hr’g Req.”), filed April 8, 2011.) Rather, Petitioner claims that (1) he was never given the opportunity to enter into a repayment agreement; and, (2) the

¹ HUD’s garnishment calculations suggest 15% of Petitioner’s pay should equal \$281.84, and the Secretary has requested authorization to initiate a garnishment for that amount. While the Secretary is investigating why only \$230.65 is currently being garnished, the record, for now, supports that Petitioner’s employer has incorrectly deducted Petitioner’s pension withholdings before accurately calculating the garnishment rate.

garnishment would create an adverse financial circumstance for him. In addition, Petitioner requests that the garnishment be reduced from a bi-weekly amount of \$230.65 to \$100.00 per pay period. Petitioner now must present evidence in support of his financial hardship claim by presenting evidence that the terms of his repayment schedule would create a financial hardship sufficient enough to forego collection of the alleged debt as proposed by the Secretary.

Petitioner first asserts that he inquired about entering a repayment arrangement soon after receiving the Notice of Intent to Initiate Wage Garnishment. (Petitioner's Doc. Evidence, filed May 19, 2011.) The Secretary contends that Petitioner was afforded the opportunity to enter into such an agreement, in compliance with 31 C.F.R. § 285.11(e)(2)(9), but neglected to do so. (Sec'y Stat., ¶ 9; Dillon Decl. ¶¶ 6-7.)

The Notice stated that "To prevent wage garnishment, you must ... enter into a [written] repayment plan acceptable to the Federal Agency before **February 17, 2011**. (Notice, p. 1)(emphasis in original). Petitioner's evidence shows that, on January 17, 2011, he contacted Diversified Collection Services, Inc. ("DCS"), HUD's private collections agency, to discuss setting up a repayment plan. (Pet'r's Hr'g Req., p. 59.) The evidence further shows that, during a telephone call with DCS on February 11, 2011, Petitioner was given standard repayment options and warned that a repayment plan would not be possible after February 14, 2011. (*Id.* at p. 48.) Petitioner said he would have to consider whether he could afford payments under the plan. (*Id.*) Petitioner did not contact DCS again until April 4, 2011, at which time he was given instructions on how to request the present hearing. (*Id.* at p. 47.) In this case, Petitioner has failed to produce evidence that otherwise refutes that presented by the Secretary. Consequently, I find that Petitioner has not been deprived of his opportunity to enter into a repayment agreement, but instead failed to enter into such repayment agreement in a timely fashion after being extended the opportunity to do so.

Petitioner next argues that the garnishment, if ordered, will cause him significant financial hardship. (Pet'r's Hr'g Req., p. 12.) Petitioner here has provided substantial documentation in support of his argument, including a Consumer Debtor Financial Statement, pay statements, home loan and utility information, credit card payment history, checking and savings account information, and other documents.

Petitioner's disposable income is defined as "that part of the debtor's compensation from an employer remaining 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). Based on Petitioner's pay statement ending April 3, 2011, Petitioner's gross pay of \$2,357.81 is deducted by the following amounts: federal income tax, \$378.60; FICA, \$99.03; City Wage Tax, \$92.61; state income tax, \$72.38; Medicare, \$34.19; and state unemployment tax, \$1.89. (Pet'r's Hr'g Req., p. 43.) The Secretary also used Petitioner's April 3, 2011, pay statement to calculate the appropriate garnishment amount. However, the Secretary lists Petitioner's federal income tax deduction as \$178.60 rather than \$378.60, in an overstatement of Petitioner's bi-weekly disposable

income. (Dillon Decl., ¶ 9; Pet'r's Hr'g Req., p. 43; attach Pay Statements.) The Secretary's request for a garnishment of \$281.84 is a result of this calculation, as 15% of Petitioner's accurate bi-weekly net pay would be \$251.86. Factoring in this adjustment, and after the listed deductions, Petitioner earns a monthly income of \$3,358.22.

Petitioner's essential monthly household expenses are: mortgage, \$1,283.00; gas, \$200.00; water/sewage, \$70.00; insurance, \$70.38; and electricity, \$57.25, for a total of \$1,680.63. Petitioner has not provided documentation clearly indicating the amount of his monthly electricity bill. He has, however, filed an electricity bill dated March 23, 2011 that shows a past due amount of \$519.06 and lists "Total new Charges" of \$57.25. As a result, the Court relied upon the latter amount of \$57.25 as the amount of Petitioner's monthly electricity expense. (Pet'r's Hr'g Req., p. 22.) Petitioner also submitted documentary evidence of several past due accounts. Most of those accounts cover expenses that do not qualify as essential household expenses. It is unclear whether other accounts, including accounts with Citibank, HSBC, LVNV Funding, and Nelnet, are associated with essential expenses. These accounts also will not be credited towards Petitioner's allowable deductions as essential monthly expenses. After deducting all essential monthly expenses, Petitioner has a monthly disposable income of \$1,677.59. A 15% garnishment would leave Petitioner with \$1,173.87, a sufficient amount to cover any other other miscellaneous expenses.

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, this Court finds that the Petitioner has failed to submit sufficient documentary evidence to substantiate his claim that the administrative wage garnishment of 15% of Petitioner's disposable income would constitute a financial hardship. Consequently, I find that a wage garnishment in the amount of 15% of Petitioner's bi-weekly disposable income is appropriate.


Finally, Petitioner requests an adjusted wage garnishment of \$100 per bi-weekly pay period. (Pet'r's Hr'g Req., p. 1.) While Petitioner may wish to negotiate the repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

For the reasons set forth above, 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 the 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 seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's bi-weekly disposable income.



Vanessa L. Hall
Administrative Judge

October 27, 2011