



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

In the Matter of:

Tammy F. Ballanger-Taylor,
Petitioner

HUDOA No. 11-M-CH-AWG142
Claim No. 780728223

Tammy F. Ballanger-Taylor
5094 Northtowne Boulevard
Columbus, OH 43229

Pro Se

Amy Jo Conroy, Esq.
US Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

Counsel for the Secretary

DECISION AND ORDER

On September 12, 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" or "Government"). 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 adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case 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. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend any active wage withholding order beginning on the 61st day after receipt of the hearing request and continuing until a written decision has been rendered.

Background

On March 13, 2009, Petitioner executed and delivered a Note to South Central Bank, N.A., in the amount of \$7,580.00 for a home improvement loan. (Secretary's Statement ("Sec'y Stat."), filed October 13, 2011, ¶ 1; Ex. A, Note) The Note 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. (*Id.* at ¶ 4.) Consequently, South Central Bank assigned the Note to the United States of America under the regulations governing the Title I Insurance Program. (*Id.*, Ex. A, p. 3; Ex. B; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated October 7, 2011, ¶ 3.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 2; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$6,696.07 as the unpaid principal balance as of September 30, 2011;
- (b) \$192.74 as the unpaid interest on the principal balance at 1% per annum through September 30, 2011;
- (c) \$301.90 as the unpaid penalties and administrative costs as of September 30, 2011; and
- (d) interest on said principal balance from October 1, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 2; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 18, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 3¹; 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., ¶ 5; Dillon Decl., ¶ 6.) To date, Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 6.)

A Wage Garnishment Order was issued to Petitioner's employer on August 18, 2011. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) As of October 13, 2011, Petitioner's wages have been garnished twice, in the amounts of \$185.28 and \$189.52. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 8.)

The Secretary suggests a proposed repayment of \$185.26 bi-weekly, which constitutes 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 10.)

¹ The Secretary's Statement erroneously states that Petitioner was sent a Notice of Intent to Collect by Treasury Offset rather than a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings. (*See* Sec'y Stat., ¶ 3.) The notice is correctly identified in the Dillon Declaration, however, and a copy of the Notice included in Petitioner's Hearing Request confirms that she received the proper notice.

Discussion

The Secretary has the initial burden of proof to show the existence and amount of the debt that is the subject of this case. 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 or unenforceable. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of any proposed 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.*

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including the sworn testimony of the Director of HUD's Asset Recovery Division, a copy of the Note, and a copy of the Note's assignment to HUD, setting forth substantial evidence of Petitioner's debt to HUD.

Petitioner does not dispute the existence or enforceability of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed August 12, 2011.) Rather, she asserts that a garnishment in the amount requested by the Secretary will create a significant financial hardship. (*Id.* at 1.)

Petitioner has provided substantial documentation in support of her argument, including a Consumer Debtor Financial Statement, pay statements, home loan and utility information, and credit card payment history. (*See* Pet'r's Hr'g Req.)

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 statements, her average bi-weekly gross salary is \$1,472.59. (*Id.*) This salary is deducted in the following amounts: federal income tax, \$49.61; social security tax, \$59.37; Medicare, \$20.50; Ohio state income tax, \$37.68; and City of Dublin income tax, \$28.27. Petitioner thus claims a net disposable bi-weekly income of \$1,277.16, or a monthly income of \$2,554.32.

The documentary evidence filed by Petitioner shows payments for the following essential household expenses. This Office will credit Petitioner with: rent, \$769; car payment, \$323.64; child care, \$293; electricity, \$167; Clothing, \$150; gasoline/auto repairs, \$150; natural gas, \$70; water and sewer, \$42; home security system, \$25. (*Id.*)

Petitioner has also filed evidence of a \$137.69 monthly bill for internet, cable, and phone. (*Id.*) This amount will not be included among Petitioner's essential monthly household expenses because this Office does not regard cable television or internet as essential needs, and there is no way to determine with precision what percentage of this bill relates to telephone service. Petitioner's monthly expenses of \$61.35 (insurance on her second car) and \$26 (YMCA membership) will also not be credited, as these are not essential expenses. Her claim of \$110 in monthly out-of-pocket medical expenses also cannot be credited because Petitioner has introduced no evidence explaining the basis for this cost.

Deducting Petitioner's allowable expenses leaves her with a monthly disposable income of \$564.68. A 15% garnishment of Petitioner's bi-weekly wages reduces this amount by a total of \$370.52, for a final monthly balance of \$194.16. It is this Office's determination that this amount is insufficient to allow Petitioner to meet her other obligations, such as food for herself and four sons. A 15% garnishment would therefore create a substantial financial hardship for Petitioner.

Finally, Petitioner requests a payment plan of \$50.00 per pay period. (Pet'r's Hr'g Req., 3.) While this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

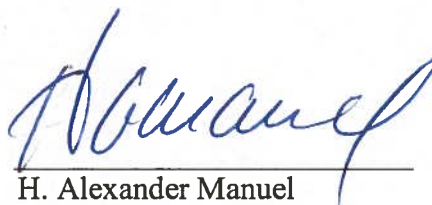
The Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. However, this Office finds that Petitioner has provided sufficient documentary evidence to substantiate her claim that the proposed repayment schedule would constitute a financial hardship. Consequently, I find that a wage garnishment of any amount would be inappropriate at this time.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place **INDEFINITELY**. For the reasons stated above, it is

ORDERED that the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at this time.

However, the Secretary shall not be prejudiced from re-filing this action in the future if Petitioner's income increases or Petitioner's expenses are mitigated.

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

H. Alexander Manuel
Administrative Judge

November 15, 2011