



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

In the Matter of:

Patricia Boyett,
Petitioner

HUDOA No. 11-M-CH-AWG63
Claim No. 780680168

Patricia Boyett
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Pro se

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DECISION AND ORDER

On March 7, 2011, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development ("HUD") to collect an alleged debt against Petitioner. 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 alleged debt in contested administrative wage garnishment proceedings is enforceable against the 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 and by 24 C.F.R. Part 26, Subpart A. 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 March 9, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral.)

Background

On July 9, 1996, Petitioner executed an FHA Title I Property Improvement Loan Retail Installment Contract ("Note"), in the amount of \$14,450.00. (Secretary's Statement ("Sec'y Stat."), filed March 21, 2011, ¶ 1; Ex. 1, Note.) When Petitioner subsequently defaulted on the loan, the Note was assigned to HUD under the regulations governing the Title I insurance program. (Sec'y Stat., ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 17, 2011, ¶ 3.)

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

- a) \$9,230.04 as the unpaid principal as of February 28, 2011;
- b) \$2,065.88 as the unpaid interest on the principal balance at 4% per annum through February 28, 2011;
- c) \$2,100.92 as the unpaid penalties and administrative costs as of February 28, 2011; and
- d) interest on said principal balance from February 28, 2011, at 4% per annum until the Note is paid in full.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated October 29, 2010, was mailed to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) Petitioner was offered the opportunity to enter into a repayment agreement but declined to do so. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) A Wage Garnishment Order, dated November 30, 2010, was issued to Petitioner's employer. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 7.) Based on the Wage Garnishment Order, one garnishment payment totaling \$698.32 has been applied to the outstanding balance stated above. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 7.) The Secretary's proposed repayment schedule remains at \$209.93 biweekly or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 8.)

Discussion

Petitioner challenges collection of the debt on the grounds that an administrative wage garnishment in the amount requested by the Secretary will create a financial hardship. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed March 7, 2011.) Petitioner bears the

burden of proving, beyond a preponderance of the evidence, that the terms of the Secretary's proposed repayment schedule would create the claimed financial hardship. 24 C.F.R. § 285.11(f)(8)(ii).

Specifically, Petitioner states: "I am unable to pay the amount of [the debt] in full, and the 15% that will be garnished from my monthly earnings will make an already difficult situation more difficult." (Pet'r Hr'g Req.) Petitioner supports her eight year old son and her husband, of whom she writes: "His health is bad and he is unable to keep a job, plus he isn't receiving unemployment, so I continue to help with his medical expenses." (*Id.*) This Office has held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (citing *In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. 31 C.F.R. §§ 285.11(k)(3).

The Secretary is authorized to garnish up to 15% of a debtor's disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay, including salary and bonuses. 31 C.F.R. § 285.11(i)(2)(i), (c). Petitioner's twice monthly pay statements indicate that her average monthly gross pay, including one incentive-based quarterly bonus, for the six months from October 2010 through March 2011 is \$4,047.00. After subtracting the allowable deductions for federal income tax withholding (\$283.56 monthly average); Medicare (\$54.87 monthly average); Social Security (FICA) (\$189.54 monthly average); health insurance (\$175.17 monthly average); dental insurance (\$48.83 monthly average); and vision insurance (\$7.33 monthly), Petitioner is left with an average disposable pay of \$3,287.70 monthly.

To determine whether wage garnishment would create a financial hardship, this Office will credit Petitioner's essential living expenses against her disposable pay. Petitioner has provided documentary evidence of a number of essential living expenses in the form of bills and receipts. After examining the documentary evidence, this Office will credit Petitioner for the following monthly essential living expenses: rent (\$600); payment on auto loan for 2005 Chevrolet Trailblazer (\$375.00); auto insurance (\$158.50); home phone (\$32.05);¹ water (\$25.80); and garbage collection (\$20.00).

Petitioner has provided copies of bills and receipts for electric and natural gas services that do not clearly show the amount due and paid each month. However, Petitioner also provided a completed Consumer Debtor Financial Statement that includes Petitioner's estimates of her monthly expenses. This Office has determined that credit may be given for certain essential living expenses based on a petitioner's estimates when the "financial information submitted by Petitioner . . . [was found to be] generally credible" *In re David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (quoting *In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Petitioner's estimates of her monthly electric and natural gas expenses are generally supported by the documentary evidence provided.

¹ Petitioner submitted copies of bills for combined phone and internet service. Because this Office does not consider internet to be an essential living expense, Petitioner will only be credited for payment made for phone service, which is estimated at half of the combined bill.

Therefore, in accordance with *Herring* and *Loera*, this Office will credit Petitioner with monthly expenses of \$185.00 for electric service and \$60.00 for natural gas service.

Petitioner has provided no documentary evidence to support her estimate of \$400.00 spent monthly for groceries for two adults and one child, and \$320.00 spent monthly for gasoline. However, because Petitioner's financial information is generally credible and her estimate for groceries for two adults and one child is reasonable, this Office will credit Petitioner with the full amount of her estimated monthly expenses for groceries. However, Petitioner's claim that she spends \$320.00 a month for gasoline for her car appears to be overstated. Therefore, absent proof of payment to support Petitioner's estimated gasoline expense, this Office will only credit Petitioner with \$250.00 for gasoline for her car.

Petitioner has also provided evidence that she incurred \$5,794.69 in out-of-pocket medical expenses during a period between October 2010 and March 2011. These expenses include co-payments, as well as the portions of emergency room visits for her son and intensive care for her husband that her health insurance did not cover. However, the evidence provided consists of forms from Petitioner's insurance company labeled "Explanation of Benefits" and clearly states "this is not a bill." Petitioner has provided no proof that such expenses are reoccurring obligations that Petitioner has yet to satisfy. Accordingly, because Petitioner has failed to provide actual bills and showing the amounts Petitioner still owes for these services, and that such medical expenses are reoccurring, I find that Petitioner's claim of \$5,794.69 in medical expenses will not be considered in the calculation of her essential household expenses.

Petitioner has also provided evidence of a number of monthly expenses that this Office will not credit against her disposable pay. Such expenses include payments for Petitioner's cable television, internet service, and second car. This Office does not consider payments for cable television and internet service to be essential living expenses. *See Charles R. Chumley*, HUDOA No. 09-M-CH-AWG09 (April 6, 2009). With regards to Petitioner's monthly payments for a second car, Petitioner states, "[m]y husband, although unemployed and separated, helps by taking care of our son after school. This is why there are two vehicle note [sic]." However, Petitioner has not demonstrated why a car for her unemployed husband who takes care of their son after school is an essential household expense. Accordingly, this Office will exclude the payments for Petitioner's second car, cable television, and internet service from the calculation of her essential household expenses.

Petitioner also contends that a \$50 monthly payment on a note held by Western Finance is an essential monthly expense, but Petitioner has provided no documentary evidence that funds borrowed on that note were spent on essential living expenses. Similarly, Petitioner lists monthly payments on a Lane Bryant credit card account and an installment contract for furniture with Aaron's Sales and Lease Ownership without providing sufficient documentary evidence to prove that the items purchased at Lane Bryant and Aaron's Sales and Lease Ownership were for essential living expenses. Accordingly, no credit will be given for these expenses. *See Cynthia Ballard Rachall*, HUDOA No. 09-CH-AWG103 (August 6, 2009) (finding that the petitioner's credit card bills would not be included in her monthly expenses calculation because the petitioner failed to provide documentary evidence to show, *with specificity*, that the credit card charges were for essential household expenses).

In sum, this Office will credit Petitioner with total of \$2,106.35 monthly for essential living expenses. Petitioner's disposable pay of \$3,287.70 less her essential living expenses of \$2,252.35 leaves a remaining balance of \$ 1,181.35 per month. A 15% garnishment rate of Petitioner's monthly disposable pay, as proposed by the Secretary, would equal \$493.15 and leave petitioner with a balance of \$688.19 per month to cover her remaining expenses. Therefore, I find Petitioner has failed to prove that the Secretary's proposed garnishment at a rate of 15% of Petitioner's disposable pay would create a financial hardship for Petitioner within the meaning of 31 C.F.R. § 285.11(f)(8)(ii).

This Office also notes that this finding relies in part on the assumption that Petitioner will continue to receive similar incentive-based bonuses, which are included in the calculation of Petitioner's disposable pay for the purposes of administrative wage garnishment. Petitioner is reminded that she may request a review of the amount garnished under 31 C.F.R. § 285.11(k)(1) if it creates a financial hardship due to a significant change in her financial situation, such as the failure to receive further incentive-based bonuses. Such review will only be granted if Petitioner is able to provide documentary evidence to support her request for a reconsideration. *See* 31 C.F.R. § 285.11(k)(2).

Finally, Petitioner indicated that her employer's incentive-based bonus program may allow her to make a lump sum payment on the Note in the future. 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 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. However, Petitioner should note that HUD has stated that it will not consider a lump sum compromise settlement until the funds are in Petitioner's possession. (Sec'y Stat., ¶ 9.) Until that time, the Secretary intends to pursue collection of the debt via administrative wage garnishment. (*Id.*)

ORDER

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 debt by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay.



H. Alexander Manuel
Administrative Judge

May 25, 2011