



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

In the Matter of:

Era D. Dawkins,

Petitioner

HUDOA No. 11-M-NY-AWG34
Claim No. 5534009 Logan Laws
9244

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Pro Se

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DECISION AND ORDER

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 are designated to determine whether the Secretary may collect the alleged debt in this case by means of administrative wage garnishment. 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 proving the existence and amount of debt in 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. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of any repayment schedule proposed by the Secretary are unlawful, would cause 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. §284.11(f)(4), on December 15, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On February 4, 1993, Petitioner executed a Retail Installment Contract ("Note"). (Secretary's Statement ("Sec'y Stat."), filed January 4, 2011, ¶ 2; Exh. A.) The Note was subsequently assigned to Logan-Laws Financial Corporation. (Sec'y Stat., ¶ 3, Exh. B, Declaration of Christopher C. Haspel, Director of the Mortgage-Back Securities Monitoring Division for HUD, (Haspel Decl.) ¶ 3.) After Logan-Laws went out of business, the loan was assigned to Government National Mortgage Association. (Sec'y Stat., ¶ 4; Exh. B, ¶ 4.) The Petitioner defaulted on the Note, and the Note was assigned to the Secretary pursuant to the provisions of the Title 1 Insurance Program. (Sec'y Stat., ¶ 6.) The Secretary now claims that the debt is due and that Petitioner has failed to make payments as required under the Note. (*Id.*)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (Sec'y Stat., ¶ 6, Haspel Decl., Exh. B, ¶ 6.) The Secretary alleges that Petitioner is now indebted to HUD in the following amounts:

- (a) \$6,016.23 as the unpaid principal balance;
- (b) \$10.71 as the unpaid interest on the principal balanced at 13% per annum through December 20, 2010; and
- (c) interest on said principal balance from December 20, 2010 until paid.

(Sec'y Stat., ¶ 6, Exh. B, Haspel Decl., ¶ 6.)

On or about July 15, 2009, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec'y Stat., ¶ 7.) Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, but has yet to do so. (Sec'y Stat., ¶ 8.) The Secretary's proposed repayment schedule is 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9; Haspel Decl., ¶ 8.)

Discussion

Petitioner does not dispute the existence amount of the debt. Rather, Petitioner asserts that the debt that is the subject of this proceeding may not be collected because the proposed administrative wage garnishment would cause financial hardship for her. (Petitioner's Hearing Request (Pet'r Hear'g Req.), dated December 1, 2010.)

Petitioner states, "First of all it is a hardship, because I no longer live at the property in question (154 Grant Street, Chattahoochee, FL). The co-owner Terry Manuel lives there...It has been a hardship paying for a resident [sic] I no longer live at and paying rent for my current resident (\$600)." ("Pet'r Hear'g Req.")

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause a financial hardship. On February 25, 2011, Petitioner filed a letter and financial statements that included copies of Petitioner's bills and payments, receipts, and bi-weekly pay statements. (Petitioner's Documentary Evidence (Pet'r Evid.))

Petitioner submitted her bi-weekly pay statements for the pay periods ending September 25, 2010, October 9, 2010, October 23, 2010, November 6, 2010, and November 20, 2010, indicating that her average bi-weekly gross pay was \$1,215.71. (Pet'r Evid.) 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...[including] amounts for deductions such as social security taxes and withholding taxes..." (31 C.F.R. §§ 285.11(c)(i)(2)(i)(A)). After subtracting allowable deductions for: Federal Tax, \$176.48; Social Security, \$106.28; Medicare, \$48.00; and Health Insurance, \$374.50, Petitioner is left with a disposable income of \$863.08 bi-weekly or \$1,726.16 monthly for the purposes of wage garnishment. (Pet'r Evid.)

Petitioner claims a total of "fixed monthly expenses" of \$1,781 which are largely substantiated by her receipts and bills. (Pet'r Evid.)

Petitioner also lists monthly bills for which actual bills or proper receipts of payment were not submitted. They include: "Rent", \$600.00, "Electricity", \$200.00, "Food", \$250.00, "Auto Insurance", \$66.00, and "Cell Phone", \$45.00. This Office has determined that credit may be given for certain essential household expenses, such as rent and food, where Petitioner has not provided bills or other documentation, yet the "financial information submitted by Petitioner...[was found to be] generally credible..." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Certain expenses are not "deemed by this Office to be basic subsidies for living expenses and thus would require Petitioner to submit documentary evidence to substantiate said expenses." *Manuel J. Simental*, HUDOA No. 08-H-CH-AWG53 (November 26, 2008) (citing *Brenda Husband*, HUDOA No. 07-L-CH-AWG31 (February 14, 2008)).

In accordance with the holding in *Herring* and *Loera*, this Office will credit Petitioner with the following monthly expenses: rent, \$600.00; electricity, \$200; and food, \$250.

Petitioner submitted bills and receipts showing acceptable household expenses for: auto payment, \$320.00; and gas, \$200. Accordingly, this Office finds that Petitioner's monthly household expenses total \$1,570.00.

Petitioner's monthly disposable income of \$1,726.16 less her household expenses of \$1,570.00 leaves petitioner with a balance of \$156.16. A 15% garnishment rate of Petitioner's monthly disposable income would result in a garnishment amount of approximately \$258.92 per month and would leave Petitioner with a negative balance of \$-102.76. A 10% garnishment rate would lower Petitioner's garnishment amount to approximately \$172.62

per month but would leave Petitioner with a negative balance of \$-16.46. A 5% garnishment rate would lower Petitioner's payments to \$86.31 per month but would leave a balance of \$69.85.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it, particularly in cases where financial hardship is found. Upon consideration, this Office finds that Petitioner has submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount sought by the secretary, would cause financial hardship.

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, a garnishment amount at any percentage of Petitioner's disposable pay would constitute financial hardship sufficient to justify suspension of collection action at this time.

ORDER

For the reasons set forth above, I find that Petitioner has submitted sufficient documentary evidence to substantiate her claim that administrative wage garnishment of her disposable pay, in the amount sought by the Secretary, would cause financial hardship. The Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time. Therefore, it is

ORDERED that the Order imposing the stay of the referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain indefinitely.

The Secretary shall not be prejudiced from seeking administrative wage garnishment in this case, in the future, should Petitioner's income increase or her expenses mitigate.



H. Alexander Manuel
Administrative Judge

March 23, 2011