

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Dominique Tozzi,

Petitioner

Docket No. 23-VH-0054-AG-032

Claim No. 780796287

February 15, 2024

DECISION AND ORDER

On February 3, 2023, Dominique Tozzi (“Petitioner”) filed a hearing request, along with limited documentary evidence, concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”). 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.

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. 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). Thereafter, Petitioner 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 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.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f) (4), on February 3, 2023, 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*”), 2). On April 3, 2023, the Secretary filed her Statement along with documentation in support of her position. Petitioner subsequently filed documentary evidence, on July 3, 2023, in support of Petitioner’s claim of financial hardship. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

According to the Secretary, Dominique N. Tozzi (“Petitioner”) executed a Home Improvement Retail Installment Contract-Ohio (herein referred to as the “Note”), dated July 14, 2010, in the principal amount of \$12,550.00. After default by the Petitioner, the Note was assigned to HUD pursuant to the terms and regulations of the Title I Insurance Program of the National Housing Act and its implementing regulations. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$9,024.48 as the unpaid principal balance as of March 2, 2023;
- b. \$663.40 as the unpaid interest on the principal balance at 1 % per annum through March 2, 2023;
- c. \$2,540.08 as the unpaid penalties and administrative costs as of March 2, 2023; and
- d. interest on said principal balance from March 3, 2023, at 1 % per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated October 31, 2022, was mailed to Petitioner’s last known address. In accordance with 31 C.F.R. 285.11(e)(2)(ii) and the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD.

Petitioner did not enter into any such agreement. Petitioner provided HUD with a copy of her bi-weekly pay statement dated, March 11, 2023. Based upon that information, HUD proposes a wage garnishment repayment schedule of \$158.76 bi-weekly, or an amount equal to 15% of Petitioner’s disposable income.

Based on the foregoing, the Secretary respectfully requests that the Court find Petitioner’s debt past due and legally enforceable and the Secretary’s proposed repayment schedule fair.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that the proposed garnishment amount would create a financial hardship and offers documentary evidence in support of his position.

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985).

Petitioner has so complied by offering documentary evidence and proofs of payment for the following essential monthly expenses: monthly mortgage, auto loan and auto insurance,

\$885.80; prescription costs and office supplies, \$126.14; utility bills, phone services and internet services, \$414.90, and lawn services, \$40.00 monthly. Based on the evidence, Petitioner's monthly household expenses total \$1466.84.

Petitioner also introduced into evidence a copy of his payroll statement that shows monthly gross earnings of \$1425.66. After subtracting the allowable deductions that included social security (FICA), federal taxes, state taxes and other deductions, Petitioner's monthly disposable income is \$1048.91.

The Secretary proposes a garnishment rate of 15% of Petitioner's disposable income, which is "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). However, Petitioner's essential household expenses of \$1466.84 already exceed his disposable income of \$1048.91 by \$417.93. In addition to his current monthly expenses of \$1466.84, the proposed 15% garnishment rate would yield an additional \$157.33 to his monthly expenses and result in a total each month of \$1624.17. This would create a negative balance each month of -\$575.26 for Petitioner.

Petitioner has met his burden of proof that the Secretary's proposed garnishment rate would cause severe financial hardship. This Court has the authority to order garnishment at a lesser rate based upon the record before it. See 31 C.F.R. § 285.11(k)(3). While the Secretary has successfully established that the subject debt is legally enforceable and past due against Petitioner in the amount so claimed in this case, the Court finds under 31 C.F.R. § 285.11(k)(3) that a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient to justify suspension of collection action at this time.


ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury on February 3, 2023 for administrative wage garnishment shall remain in place, indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment based on Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment should, in the future, Petitioner's income increase, or his essential household expenses be reduced.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).