

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

In the Matter of:

CARMEN Y. ATKINS,

Petitioner.

HUDOA No. 12-AM-CH-AG-127
Claim No. 770653381OB

May 1, 2013

DECISION AND ORDER

On September 12, 2012, Carmen Atkins (“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 “the 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 federal government.

The Secretary of HUD has designated the administrative judges of this Office 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 requested and continuing until a written decision has been rendered.

Background

On September 11, 1991, Petitioner executed and delivered a Note to Unicor Funding, Inc. in the amount of \$17,500. (Secretary’s Statement (“Sec’y Stat.”), dated October 25, 2012, ¶ 2; Ex. 1, Note.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec’y Stat., ¶ 3.)

When Petitioner failed to make payment on the Note, the Note was assigned to the United States of America pursuant to 24 C.F.R. § 201.54. (Sec’y Stat., ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center “Dillon Decl.”, dated October 25, 2012, ¶ 3.) HUD’s attempts to collect the debt from Petitioner have been unsuccessful. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$3,090.18 as the unpaid principal balance as of October 16, 2012;
- (b) \$544.20 as the unpaid interest on the principal balance at 4% per annum through October 16, 2012;

(c) interest on said principal balance from November 1, 2012, at 4% per annum until paid.

(Sec’y Stat., ¶ 8; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Wage Administrative Wage Garnishment Proceedings dated July 23, 2012 was mailed to Petitioner. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.) A Wage Garnishment Order (“Garnishment Order”), dated August 23, 2012, was mailed to Petitioner’s employer, and Petitioner’s pay was garnished twice. All garnishments are reflected in the outstanding amounts listed above. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 8.)

Petitioner has not provided a paystub. Therefore, the Secretary proposes a repayment schedule of either \$263.50 per pay period, which will liquidate the debt in approximately three years, or 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 9.)

Discussion

The Secretary has the initial burden of proving the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show, by a preponderance of the evidence, that the debt does not exist or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the 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 in this case, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Acting Director of HUD’s Asset Recovery Division. (Ex. 1; Ex. 2.) Accordingly, I find that the Secretary has met his initial burden of proof.

Petitioner does not dispute the existence or validity of this debt. Rather, she claims that she did not receive proper notice of the debt. Specifically, in reference to the Garnishment Notice she received on August 25, 2012, Petitioner states, “This is the first time that I am hearing of this debt to HUD.” (Pet’r’s Letter, dated August 27, 2012.) In response to Petitioner’s claim that she was not properly notified of the debt prior to being garnished, the Court ordered HUD to file evidence certifying that Petitioner’s Notice of Intent was properly sent 30 days before issuing a Garnishment Order, as required by law.

Pursuant to 31 C.F.R. 285.11(e), prior to initiating wage garnishment proceedings, HUD must give at least 30 days in advance of its intention to initiate wage garnishment proceedings. Specifically, the agency must give notice of the nature and amount of the debt, notice of its intent to collect the debt through payroll deductions, and it must explain the debtor’s rights. Such notice is “is effective upon dispatch, *if properly and reasonably addressed.*” See, Shirley Robinson, HUDOA No. 08-H-CH-JJ43 (September 25, 2008) (citing Kenneth Holden, HUDBCA No. 89-3781-K293 (June 6, 1989)).

On January 24, 2013, the Secretary then filed a Supplemental Secretary's Statement, which included USPS return receipts indicating that the Notice was mailed on July 23, 2012. The tracking information indicates that Petitioner received the Notice and information about entering into a repayment plan on August 25, 2012, which is corroborated by Petitioner's August Letter.

Although it is unknown why delivery of the letter did not occur for several weeks, the Notice sent to Petitioner was effective as of July 23, 2012, because it was properly addressed to Petitioner, as evidenced by the fact that it was eventually delivered by the Postal Service. The fact that Petitioner did not receive the notice until several weeks later is not dispositive under the facts of this case. In addition, Petitioner has not filed evidence to prove that the Secretary's proposed repayment schedule would create a financial hardship for her. The Secretary has established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. Accordingly, I find that the Secretary is authorized to seek repayment of the debt via administrative wage garnishment.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary may seek collection of this outstanding debt by means of administrative wage garnishment to the extent authorized by law.



H. Alexander Manuel
Administrative Judge