

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

In the Matter of:

**Calvin Sanders,**

Petitioner

HUDOA No.: 12-H-CH-AG109

Claim No. 780065212-0A

January 11, 2013

**DECISION AND ORDER UPON RECONSIDERATION**

On July 18, 2012, 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”). This Court issued a *Decision and Order* on November 29, 2012, ruling that the debt was due and owing in the amount alleged by the HUD Secretary. Moreover, the Court held that the Secretary was authorized to pursue collection of the debt via administrative wage garnishment in the amount of either \$180.82 per pay period or 15% of Petitioner’s disposable income. On December 10, 2012, Petitioner requested reconsideration of the initial *Decision and Order*. To date the Secretary has not filed a response to Petitioner’s *Request*. Upon due consideration, and without objection, Petitioner’s Motion for Reconsideration is **GRANTED**.

**Applicable Law**

The purpose of reconsideration is not to afford a party the opportunity to reassert contentions that the Court has already considered and adjudicated. It is also not intended to allow a party to introduce evidence that it could have, but did not, raise in the initial proceeding. See Mortgage Capital of America, Inc., supra; Louisiana Housing Finance Agency, HUDBCA No. 02-D-CH-CC006 (March 1, 2004); Charles Waltman, HUDBCA No. 97-A-NY-W196 (September 21, 1999). Reconsideration is, instead, a discretionary matter that will not be granted in the absence of compelling reasons, e.g., newly discovered material evidence, clear error of fact or law, or evidence that the debt has become legally unenforceable since the issuance of the initial decision. See Lawrence Syrovatka, HUDOA No. 07-A-CH-HH10 (January 8, 2009); Mortgage Capital of America, Inc., HUDBCA No. 04-D-NY-EEO32 (September 19, 2005); Paul Dolman, HUDBCA No. 99-A-NY-Y41 (November 4, 1999); Anthony Mesker, HUDBCA No. 94-C-CH-S379 (May 10, 1995); 24 C.F.R. § 17.69(d).

**Discussion**

Petitioner alleges that the initial *Decision and Order* contained two material errors that warrant reconsideration. First, Petitioner contends that the Court misread his pay statement from the East Chambers Independent School District (“ECISD”), and thus overstated his

disposable monthly income. In the *Decision and Order*, the Court noted that the pay statement covered “a pay period beginning on September 1, 2012 and ending on September 18, 2012,” meaning Petitioner was paid bi-weekly. After deductions, the pay statement showed a net income of \$1,328.52. The Court therefore calculated Petitioner’s monthly income from ECISD as \$2,657.04. But, Petitioner now claims that his pay from ECISD is monthly rather than bi-weekly. As support for his position, Petitioner directs the Court’s attention to the “period beginning,” “period end,” and “check date” portions of his various pay statements.

The pay period dates are not legible on every pay statement. However, the statements that more clearly reflect this information sufficiently substantiate Petitioner’s argument. For example, the pay statement Petitioner includes with his *Reconsideration Request* lists a “period beginning” date of August 1, 2012, and a “period end” date of August 31, 2012. The check itself was issued on August 17, 2012. Upon further examination of the evidence in the record, the Court agrees with Petitioner and finds that Petitioner is paid approximately \$1,328.52 monthly by ECISD.

Petitioner next contends that the Court improperly excluded his homeowner’s insurance as an essential monthly expense. As support, Petitioner provided a copy of his mortgage bill for September, 2012. The bill reflects specifically \$457.85 as the amount of the monthly mortgage payment, and lists “Insurance Due” in the amount of \$1,188.63. Also listed with these figures is a handwritten amount of “\$396.21 per month” for the monthly insurance payment.

Petitioner’s claim of homeowner’s insurance had not been raised during the initial proceeding, and currently, on reconsideration, has not been established as an issue that is based on material evidence that has been newly discovered. Since this evidence was never introduced to the Court, the Court cannot be held responsible for not considering evidence that was never introduced by Petitioner. Moreover, it is unclear whether Petitioner pays the homeowner’s insurance in one lump sum or instead amortizes payments over the course of several months. If the “\$396.21 per month” notation suggests that the insurance would be paid off in three months to meet the total due of \$1,188.63, this expense certainly would not be considered a recurring expense that should be considered a monthly expense over a 12-month period.

In the initial *Decision and Order* the amount of Petitioner’s monthly disposable income was calculated to be \$5,456.60, before the deduction of his essential monthly household expenses. But, that amount was in error. Relying upon the revised monthly income amount from ECISD, Petitioner’s monthly disposable income is now \$4,128.08 each month. However, Petitioner’s essential monthly expenses remain undisturbed at \$2,872.53. Petitioner is therefore left with a disposable income of \$1,255.55, after the deduction of his essential monthly expenses.

The monthly garnishment amount of \$188.33 would reduce further Petitioner’s monthly income to a positive balance of \$1,067.22 per month. Based upon the evidence presented by Petitioner, this positive balance is deemed sufficient to cover any remaining miscellaneous monthly expenses Petitioner may incur. Accordingly, I find that the alleged debt is legally enforceable against Petitioner in the amount claimed by the Secretary, and I further find that the proposed garnishment amount of 15% of Petitioner’s disposable income would not constitute financial hardship for Petitioner.

**ORDER**

Based on the foregoing, the initial *Decision and Order* issued in this matter on November 29, 2012, **SHALL NOT BE MODIFIED** and **SHALL REMAIN IN FULL FORCE AND EFFECT.**

/o/ original signature \_\_\_\_\_

Vanessa L. Hall

Administrative Judge