

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

In the Matter of:

Elnor Caro,

Petitioner.

Case No. 12-H-CH-AWG36

Claim No. 721007029

June 8, 2012

DECISION AND ORDER

On January 1, 2012, Petitioner filed her request for 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 authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government. 31 U.S.C. § 3720D.

The HUD Secretary has designated the administrative judges of this Court to conduct a hearing to determine whether the disputed debt is past due and legally enforceable. The hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

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 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 January 5, 2012, this Court stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated January 5, 2012.)

In response to the Notice of Docketing, and the subsequent Order issued to Petitioner on March 1, 2012, Petitioner submitted documentary evidence on March 15, 2012 and March 21, 2012 in support of her position. In response to an Order issued on January 1, 2012 to the Secretary, the Secretary, through counsel, filed his Statement on January 19, 2012. The record is now ripe for review by this Court.

Background

On January 22, 2004, the Petitioner executed and delivered a Partial Claim Subordinate Note ("Note") payable to the order of the Secretary of HUD in the amount of \$4,355.96. (Secretary's Statement ("Sec'y Stat."), filed January 19, 2012, ¶ 1; Ex. A, Subordinate Note.) The Note was executed and delivered to evidence a loan that was made by HUD to Petitioner as a means of providing foreclosure relief by payment of arrearages on her primary FHA-insured mortgage. (Sec'y Stat., ¶ 1; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center, ("Dillon Decl."), filed January 17, 2012, Ex. B, ¶ 4.)

The Note provides that it becomes due on March 1, 2032 or earlier, when the first of the following events occurs: 1) the Borrower has paid in full all amounts due under the primary note and related HUD-insured mortgage; or 2) the maturity date of the primary note has been accelerated; or 3) the primary note and related mortgage are no longer insured by the Secretary; or, 4) the purchaser does not occupy the property as his/her principal residence. (Sec'y Stat., ¶ 2; Ex. A, ¶ 4(A)). On or about July 12, 2004, the FHA insurance on the first mortgage was terminated, after the mortgagee indicated that the mortgage had been paid in full. (Sec'y Stat., ¶ 2; Dillon Decl., ¶ 4).

The Secretary has attempted to collect on the claim from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$3,768.43 as the unpaid principal balance as of December 31, 2011;
- b) \$28.26 as the unpaid interest on the principal balance at 1% per annum through December 31, 2011; and
- c) \$262.38 as unpaid penalties and administrative costs as of December 31, 2011;
- d) Interest on said principal balance from January 1, 2012 at 1% per annum until paid.

(Sec'y Stat., ¶ 3; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment ("Notice"), dated October 21, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 6.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under mutually agreeable terms. (Dillon Decl., ¶ 7.) Petitioner has not entered into a written repayment agreement in response to the Notice. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 8.)

HUD has not been able to obtain a copy of Petitioner's pay statement. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 9.) Consequently, HUD's proposed repayment schedule is \$115.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 9.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides Federal agencies with a remedy for the collection of debts owed to the United States Government. The Secretary has provided documentary evidence in support of his position that the Petitioner is indebted to the Department in a specific amount. Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 31 C.F.R. § 285.11(f)(8)(ii); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

In this case, Petitioner does not dispute the existence or amount of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed January 3, 2012.) Rather, Petitioner disputes the terms of the proposed repayment schedule and asserts that garnishment of her wages will cause financial hardship. (Petitioner's Documentary Evidence ("Pet. Ev. I"), filed March 15, 2012.) 31 C.F.R. § 285.11(f)(8)(ii) provides that Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship.

Petitioner states that she is "in a financial crisis" due to her and her husband's medical problems. (Pet. Ev. I.) As support, Petitioner has provided credible proofs of payment that substantiate her monthly household expenses. (Pet. Ev. I.) These expenses include: mortgage, \$716.22; electric, \$74.73; utility, \$105.55; natural gas, \$76.00; auto loan, \$378.61; and telephone, \$92.50. (Pet. Ev. I.) The monthly expenses submitted by Petitioner total \$1,443.61 for essential household expenses. *See Gary Cannady*, HUDOA No. 08-M-CH-AWG26 (June 12, 2009). As a result, Petitioner's combined cellular phone expenses of \$84.20 were not credited towards Petitioner's monthly expenses because such expenses were not deemed to be essential.

In addition, Petitioner also maintains that her decreasing income further supports her financial hardship claim. Petitioner states that she had to take three months off from work following her surgery in the summer of 2011, and for now she remains on "light duty," working only 24 hours per week. (Pet. Ev. I.) As evidence of her decreasing income, Petitioner submitted bi-weekly pay statements from 2011 and 2012. (Petitioner's Documentary Evidence ("Pet. Ev. II"), filed March 21, 2012.) The pay statements show a notable reduction in income since the pay period ending on August 15, 2011. (Pet. Ev. II.)

Based on the pay statements submitted by Petitioner for October through December, 2011 and February through March, 2012, Petitioner's average monthly disposable income is \$715.56. Petitioner's monthly expenses of \$1,443.61, alone, would exceed Petitioner's monthly disposable income by (-\$728.05). A 15% garnishment rate of Petitioner's current monthly disposable income would equal approximately \$107 per month (15% of \$715.56 = \$107.33). A 10% garnishment rate would lower Petitioner's garnishment amount to approximately \$73 per month, and, at 5%, would lower Petitioner's payments to approximately \$36 per month. To impose an administrative wage garnishment against Petitioner would in fact create a financial hardship. The additional garnishment amount would increase Petitioner's monthly expenses by an even wider margin, and also would consistently leave Petitioner with a negative balance to cover her essential expenses on a monthly basis.

While the Secretary has successfully established the legal enforceability of the debt that is the subject of this proceeding, in the amount claimed by the Secretary, I find that Petitioner has proven, by a preponderance of the evidence, that a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to forgo collection at this time.

ORDER

Based on the forgoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury 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 because of Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or her expenses for necessities are reduced.

/s/ original

Vanessa L. Hall

Administrative Judge