

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

In the Matter of:

**Susan Bilyeu,**

Petitioner

HUDOA No.: 12-H-CH-AWG53

Claim No. 7-802808110A

August 17, 2012

**DECISION AND ORDER**

On February 6, 2012, Petitioner filed a request for a hearing to contest a proposed administrative wage garnishment related 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 nontax debts owed to the United States Government. 31 U.S.C. § 3720D.

By regulation, the administrative judges of this Court have been designated to conduct a hearing to determine whether the disputed debt is past due and legally enforceable. 24 C.F.R. § 17.81(b). 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(a). 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 proposed repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. (*Id.*)

In response to the Notice of Docketing issued by the Court on February 9, 2012, the Secretary, through counsel, filed his Statement on March 6, 2012. On March 23, 2012 Petitioner submitted documentary evidence in support of her position. The record is now ripe for review by this Court.

**Background**

On December 9, 2006, Petitioner executed an Ohio Retail Installment Contract and truth in Lending Disclosure Statement (Note) under the provisions of the Title I insurance program. (Secretary's Statement ("Sec'y Stat."), filed March 6, 2012, ¶ 1; Sec'y Stat., Ex. 1, Note.) After default by Petitioner, the Note was assigned to HUD by Conseco Finance Servicing Corp. f/k/a Green Tree Financial Servicing Corp. (Sec'y Stat., Ex. 2, Declaration of Brian Dillon, ("Dillon Decl."), Director, Asset Recovery Division, HUD Financial Operations Center, dated February 28, 2012, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$20,575.94 as the unpaid principal balance as of January 31, 2012;
- (b) \$5,431.28 as the unpaid interest on the principal balance at 5.0% per annum through January 31, 2012; and
- (c) interest on said principal balance from February 1, 2012 at 5.0% per annum until paid.

(Sec'y Stat., ¶ 4, Ex. 2.)

On August 4, 2009, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec'y Stat., ¶ 5, Ex. 2.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. Petitioner entered into a repayment agreement and made 16 payments over a twenty-one month period. The last payment was received on July 18, 2011 and the agreement went into default. (Sec'y Stat., ¶ 6, Ex. 2.)

A first Wage Garnishment Order, dated September 30, 2011, was issued to Petitioner's employer, and due to a lack of response, a second Wage Garnishment Order was issued on, or around, January 12, 2012. (Sec'y Stat., ¶ 7-8, Ex. 2.) Due to a continued lack of response, a third and final Wage Garnishment Order was faxed to Petitioner's employer on February 23, 2012. (Sec'y Stat., ¶ 9, Ex. 2.) After July 18, 2011, no wages have been garnished to date.

The Secretary's proposed repayment schedule is \$375.53 bi-monthly, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 11, Ex. 2.)

### Discussion

Petitioner challenges the collection of the alleged debt on the grounds that the administrative wage garnishment, as claimed by the Secretary, will create a financial hardship for Petitioner. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed February 6, 2012.) Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that the terms of the proposed repayment schedule would create a financial hardship.

In this case, Petitioner claimed that she was on short term disability and was receiving 70% of her base pay. She also stated that her short-term disability was extended to April 9, 2012, that she was in an intensive outpatient program ending tentatively on April 13, 2012, and that it was likely that time was to be extended. (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed March 23, 2012.) Petitioner provided a copy of her Family Medical Leave of Absence (FMLA) from January 17, 2012 to April 9, 2012 as well as pay statements from November 30, 2011 to March 15, 2012. (*Id.*)

Petitioner's pay statements from November 30, 2011 through January 15, 2012 indicate her gross salary prior to her FMLA to be \$3,255.80. Her pay statements from January 31, 2012 through March 15, 2012 indicate that, during her FMLA, her gross salary was an average of \$3,012.73. (Pet'r's Doc. Evid.) While Petitioner claimed that her time in the outpatient program

was likely to be extended, there was no evidence of record to support her claim that her FMLA leave continued past April 9, 2012. As a result, the Court relied on the monthly income amount of \$3,255.80 supported by her pay statements prior to the FMLA period. After subtracting the allowable bi-weekly deductions for federal income tax withholding (\$326.26), state tax withholding (\$92.33), city tax withholding (\$61.01), social security (\$128.13), Medicare (\$44.23), and health insurance (\$100.34), Petitioner's remaining balance totalled \$2,503.50 bi-weekly, or \$5,007.00 in monthly disposable income. (*Id.*)

Petitioner also produced evidence that as of July 24, 2012 she was placed on long-term disability (LTD) beginning July 24, 2012 and expiring on July 23, 2014. (Petitioner's Documentary Evidence (Pet'r's Aug. Docs), filed August 16, 2012, Attachment.) The LTD benefit will be "60% of Petitioner's base pre-disability earnings," which means that Petitioner's monthly income is now reduced by 40%. Furthermore, instead of monthly earnings of \$6,511.58, Petitioner will receive a monthly LTD benefit of \$3,906.95, 60% of her monthly earnings. (Pet'r's Aug. Docs, Attached LTD Benefit Calculation.)

As support for essential monthly expenses, Petitioner submitted documentary evidence of the following proofs of payment: Sallie Mae student loan, \$126.39 and Nelnet student loan, totaling \$277.10; rent, \$900.00; car insurance, \$101.60; car payment, \$340.87. (*Id.*) While Petitioner submitted copies of rent checks in the amount of \$1,015.00 for November, 2011 and January, 2012, she stated that as of March 1, 2012, she had relocated to a smaller apartment. (*Id.*) As support, she provided a copy of the lease for this apartment that showed her new monthly payment now to be \$900.00. (*Id.*)

On an expense report submitted by Petitioner, she estimated her monthly grocery bill to be \$400.00. (Pet'r's Hr'g Req.) Petitioner also provided credit card statements but failed to identify, with specificity, the relationship between the charges reflected on the statement to the costs for Petitioner's essential monthly expenses. (Pet'r's Doc. Evid.) The remaining expenses listed on Petitioner's expense report will not be credited towards Petitioner's essential monthly expenses because such expenses were not adequately supported by documentary evidence. As a result, Petitioner will only be credited \$400.00 for groceries. Thus, the sum total of Petitioner's monthly essential household expenses is \$2145.96.

Petitioner's monthly LTD benefit as income at \$3906.95, less her monthly essential household expenses of \$2145.96, results in a remaining balance of \$1760.99 per month. A 15% garnishment rate of Petitioner's monthly disposable income, as proposed by the Secretary, would equal \$586.00 monthly. Even after the deduction of Petitioner's essential household expenses, Petitioner's monthly balance would result in a total of \$1174.99 per month to cover any remaining miscellaneous expenses. 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. However, based upon the evidence presented by Petitioner, an order for administrative wage garnishment of Petitioner's disposable income at the rate of 15% neither would create a financial hardship, nor would it affect Petitioner's ability to meet the essential monthly expenses for her household. Therefore, I find that Petitioner has failed, by a preponderance of the evidence, to meet her burden of proof for her claim of financial hardship and thus remains legally obligated to pay the debt that is the subject of this proceeding. If Petitioner finds in the future, that her financial

circumstances should materially change, Petitioner may, pursuant to 31 C.F.R. § 285.11(k)(3), request a review of the amount garnished.

**ORDER**

Based on the foregoing, I find that the debt that is the subject of this proceeding is enforceable in the amount claimed by the Secretary.

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 is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of 15% of Petitioner's disposable income.

/s/ original signature  
Vanessa L. Hall  
Administrative Judge