

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

In the Matter of:

Jill Flint McKoy,

Petitioner.

Case No. 12-H-NY-AWG54

Claim No. 770886494-0B

June 22, 2012

DECISION AND ORDER

On February 14, 2012, Petitioner filed a 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 Office 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 February 16, 2012, this Office 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").)

In response to the Order issued by the Court on February 16, 2012, the Petitioner submitted documentary evidence on February 29, 2012, and the Secretary, through counsel, filed his Statement on February 22, 2012. The record is now ripe for review by this Court.

Background

On November 17, 1994, Petitioner executed and delivered a Note ("Note") to Hometrust Mortgage Bankers in the amount of \$25,000.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y. Stat."), filed February 22, 2012, Ex. A, Note.) Petitioner failed to make payment on the Note as agreed. (Sec'y. Stat., ¶ 3; Sec'y. Stat., Ex. B, Declaration of Gary Sautter¹ ("Sautter Decl."), ¶ 3.) Consequently, in accordance with 24 C.F.R. § 201.54, on March 27, 1996, Hometrust Mortgage Bankers assigned the Note to the United States of America. (Sec'y. Stat., ¶ 3; Sautter Decl., ¶ 3.) The Secretary is the holder of the Note on behalf of the United States. (Sec'y. Stat., Ex. A, p. 2.)

The Secretary has attempted to collect this debt from Petitioner, but has been unsuccessful. (Sec'y. Stat., ¶ 4.) As a result, Petitioner remains in default on the Note. (*Id.*) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$19,447.62 as the unpaid principal balance as of February 3, 2012;
- b) \$0 as the unpaid interest on the principal balance at 5% per annum through February 3, 2012; and
- c) Interest on said principal balance from February 1, 2012 at 5% per annum until paid.

(*Id.*)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment ("Notice"), dated January 3, 2012, was sent to Petitioner. (Sec'y. Stat., ¶ 5; Sautter Decl., ¶ 5.) 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. (Sec'y. Stat., ¶ 6.) Petitioner's proposed repayment agreement of \$25.00 per month was deemed unacceptable by HUD. (*Id.*)

HUD reviewed the pay statement provided by the Office of Appeals with Petitioner's appeal. (Sec'y. Stat., ¶ 7.) The pay statement provides that Petitioner's biweekly gross salary is \$3,374.46. (*Id.*) Less allowable deductions, Petitioner's biweekly net disposable pay equals \$2,062.14. (*Id.*) Administrative Wage Garnishment of 15% of Petitioner's disposable pay would equal \$309.32 biweekly. (*Id.*)

Therefore, the Secretary's proposed repayment schedule is \$309.32 biweekly, or 15% of Petitioner's disposable pay. (*Id.*)

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

¹ Acting Director, Asset Recovery Division, HUD Financial Operations Center.

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).

Petitioner does not dispute the existence or amount of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g. Req."), filed February 14, 2012.) Rather, Petitioner disputes the terms of the proposed repayment schedule and asserts that garnishment of her wages will cause financial hardship. (Pet'r's Hr'g. Req.) In support of her financial hardship claim, Petitioner produced copies of proofs of payment for monthly expenses and a HUD Debt Resolution Financial Statement. (Petitioner's Response ("Pet'r's Resp."), filed February 29, 2012, Attaches.) Petitioner also included a bi-weekly pay statement from the City of New York for the pay period of January 16, 2012 to January 31, 2012. (Pet'r's Resp.) This pay statement indicates that Petitioner's bi-weekly gross income totals \$3,374.46. After subtracting taxes and other allowable deductions, Petitioner's bi-weekly disposable income is \$2,062.14, or \$4,124.48 per month.

When analyzing a financial hardship claim, this Court takes into consideration a Petitioner's essential monthly living expenses. Here, Petitioner has monthly living expenses totaling \$2,701.17 which include: mortgage, \$1,519.02; electric, \$152.94; water and sewer, \$57.47; gas, \$481.74; groceries, \$400.00; and, telephone, \$90.00. (Pet'r's Resp.) Petitioner also included pension repayments as an expense. But such payments are not considered necessary living expenses, and thus will not be credited towards Petitioner's monthly expenses. Since Petitioner has already received credit for mortgage payments she made, she will not be credited for the rental payments made by Mr. Willie McKoy for additional senior citizen housing. (Pet'r's Hrg. Req.) Since such payments were not made by her that expense will not be included in the calculations of her monthly living expenses.

The Secretary requested in this case a garnishment of \$309.32 bi-weekly, or \$618.64 per month, which represents 15% of Petitioner's disposable income. (Sec'y. Stat., ¶ 7.) This Court has the authority to order garnishment at a lesser rate than the amount proposed by the Secretary. 31 C.F.R. § 285.11(k)(3). However, based upon the evidence presented by Petitioner, an order for administrative wage garnishment of Petitioner's disposable income in the amount proposed by the Secretary would not only not create a financial hardship, but also would not affect Petitioner's ability to meet the monthly expenses that routinely cover her basic household needs. Petitioner's disposable income of \$4,124.48 per month exceeds her monthly living expenses of \$2,701.17 by \$1,423.31. This amount does not reflect financial hardship, but instead significantly exceeds the Secretary's requested garnishment of \$618.64 per month. I find, therefore, that Petitioner has not established by a preponderance of the evidence her claim of financial hardship, and as a result, Petitioner remains legally obligated to pay the alleged debt.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding is past due and legally enforceable in the amount alleged 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 in the amount of \$309.32 bi-weekly, or 15% of Petitioner's disposable income.



Vanessa L. Hall
Administrative Judge