

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

In the Matter of:

Hameedah Amatullah,

Petitioner

HUDOA No. 12-M-CH-AG83

Claim No. 721006984

October 16, 2012

DECISION AND ORDER

On May 2, 2012, Petitioner requested a hearing concerning the existence, amount, or enforceability of 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.

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 must then 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).

Pursuant to 31 C.F.R. § 285.11(f)(4), on May 3, 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 May 3, 2012.)

Background

On January 12, 2004, Petitioner executed and delivered to the Secretary a Subordinate Promissory Note ("Note") and Security Instrument to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her home. (Secretary's Statement ("Sec'y Stat.") ¶ 1, filed May 11, 2012; Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Porter Decl.") ¶ 4, dated May 9, 2012.) The principal amount to be repaid under the Note was \$4,925.74. (Sec'y Stat. ¶ 2.) The Note cited specific events that made the debt become due and payable, one of those events being if Petitioner paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y Stat. ¶ 2; Porter Decl. ¶ 4.) On or about August 19, 2005, the FHA insurance on the first mortgage was

terminated, as the lender indicated the mortgage was paid in full. (Sec'y Stat. ¶ 3; Porter Decl. ¶ 4.)

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

- (a) \$4,476.10 as the unpaid principal balance as of April 30, 2012;
- (b) \$7.46 as the unpaid interest on the principal balance at 1% per annum through April 30, 2012;
- (c) \$0.00 as the unpaid penalties and administrative costs as of April 30, 2012; and
- (d) interest on said principal balance from May 1, 2012 at 1% per annum until paid.

(Sec'y Stat. ¶ 6; Porter Decl. ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 6, 2012 was sent to Petitioner. (Sec'y Stat. ¶ 7; Porter Decl. ¶ 6.) 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 but declined to do so. (Sec'y Stat. ¶ 8; Porter Decl. ¶ 7.)

The Secretary's proposed repayment schedule is \$124.54 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. ¶ 9; Porter Decl. ¶ 9.)

Discussion

The Secretary bears the initial burden of proof to show 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, the amount of the debt is incorrect or unenforceable, or that the terms of the proposed repayment schedule would cause financial hardship. 31 C.F.R. § 285.11(f)(8)(ii).

As evidence of the existence and amount of the debt, 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. (*See* Sec'y Stat., Ex. 1, Ex. 2). This Court therefore finds that the Secretary has met his initial burden of proof.

Petitioner objects to the existence of the debt and, in the alternative, claims that garnishment in the amount requested by the Secretary would create a financial hardship. (Pet'r's Hr'g Req., filed May 2, 2012; Bank Statement from Pet'r, filed July 10, 2012; Letter and Docs. from Pet'r., filed July 23, 2012.)

In support of her claim that the debt no longer exists, Petitioner states that her "[h]ouse was sold [in] 2005 and [the] debt was paid at that time . . . [the] [m]ortgage was paid in full at closing. Never knew any additional monies was [sic] owed." (Pet'r's Hr'g Req.) Despite her

claim that the debt was paid in full, Petitioner has failed to submit any documentary evidence to prove that the debt was in fact satisfied when Petitioner's house was sold. "Assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (Mar. 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (Oct. 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (Oct. 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (Jan. 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 28, 1986).

In the instant case, Petitioner has failed to produce evidence of a written release from her obligation to pay the debt or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the debt unenforceable. Therefore, this Court finds Petitioner's claim of prior satisfaction of the debt to fail for lack of proof.

Petitioner also objects to the Secretary's collection of the debt through administrative wage garnishment on the basis of financial hardship. (Letter and Docs. from Pet'r.) As support for her claim, Petitioner submitted two copies of pay statements as well as copies of various bills. (*Id.*, attachs.) Petitioner's bi-weekly pay statements for the pay periods between June 18, 2012 and July 15, 2012 reflect a gross income of \$3,547.01. (*Id.*) The Secretary is authorized to garnish up to 15% of the debtor's disposable pay, which is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After subtracting allowable deductions for FICA, \$200.40; federal tax, \$540.02; and state tax, \$177.35, Petitioner is left with a monthly disposable income of \$2,629.24. (*Id.*)

Petitioner submitted documentary evidence of the following essential monthly household expenses: cell phone, \$112.09; electricity, \$60.93, homeowners association fee, \$120.00; water, \$34.92; rent, \$727.91; car insurance, \$90.67; life insurance, \$34.73; and natural gas, \$23.56.¹ (Letter and Docs. from Pet'r., attachs.) Petitioner failed to file documentary evidence to support her claimed expenses of gasoline, \$244.00; food, \$300.00; car note, \$567.20; and medical prescriptions, \$16.00. However, this Court has held that credit may be given to certain essential monthly living expenses in instances where the Petitioner lists monthly expenses but does not provide bills or other documentation. *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, at 4 (July 30, 2004). Similarly, in this case, the Court will consider allowances to pay for Petitioner's reasonable and necessary living expenses. As a result, this Court will credit Petitioner's alleged expenses of food, gasoline, and prescriptions. Petitioner will also be credited with \$400.00 toward her car note expense, as the Court deems \$567.20 to be excessive.

¹ Petitioner states that her natural gas bill was \$23.56 in June but increases to \$98.67 during the winter months. Petitioner, however, only submitted proof of her natural gas expense for the month of June. Therefore, this Court can only credit Petitioner with \$23.56 per month in natural gas.

Therefore, based upon the evidence provided by Petitioner, Petitioner's essential monthly household expenses total \$2,164.81.

The following expenses are not included as part of Petitioner's essential household expenses because Petitioner has not submitted sufficient documentary evidence to establish that they are essential household expenses: television and internet, \$126.11; HSBC credit card, \$25.00; gym membership, \$29.99; and dry cleaning/laundry, \$81.24. (Letter and Docs. from Pet.r., attachs.)

This Court does not consider cable or television to be an essential monthly expense and therefore did not include either in the calculation of Petitioner's monthly household expenses. *E.g., David K. Horr*, HUDOA No. 11-M-CH-AWG81, at 3 (July 20, 2011). Further, Petitioner's claimed expense for an HSBC credit card cannot be considered because Petitioner has not provided proof of the type of expenses the credit card covers. Without proof that the credit card expense represents payments for necessary household items, this Court is without authority to credit Petitioner with their payment. Neither can the Court credit Petitioner with claimed expenses for a gym membership or dry cleaning/laundry because Petitioner failed to provide proof of payment of these expenses. In any event, this Court cannot consider Petitioner's gym membership because there is no indication that such an expense is essential.

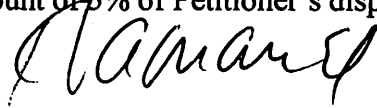
Petitioner's disposable income exceeds her living expenses by \$464.43. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$394.39 and would leave Petitioner with a balance of \$70.04. A rate of 10% would result in a garnishment amount of \$262.92, leaving petitioner with \$201.51. At 5%, Petitioner's monthly garnishment would be \$131.46, leaving a balance of \$332.97.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Court has the authority to order garnishment at a lesser rate based upon the record before it, where financial hardship is found. Upon consideration, this Court finds that Petitioner has submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount sought by the Secretary, would cause a financial hardship. Therefore, I find that an administrative wage garnishment of Petitioner's disposable income at the rate of 5% would enable Petitioner to meet her necessary miscellaneous expenses.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding debt by means of administrative wage garnishment in the amount of 5% of Petitioner's disposable pay.



H. Alexander Manuel
Administrative Judge