



Office of Appeals  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001

In the Matter of:

**Carolyn A. Reed,**  
Petitioner

HUDOA No. 12-M-CH-AWG05  
Claim No. 780728025

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*Pro Se*

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**DECISION AND ORDER**

On October 5, 2011, 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" or "Government"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

The administrative judges of this Office have been designated to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD must suspend any active wage withholding order beginning on the 61st day after receipt of the hearing request and continuing until a written decision has been rendered.

## Background

On September 24, 2007, Petitioner executed a Home Improvement Retail Installment Contract ("Note") in the amount of \$22,774.00. (Secretary's Statement ("Sec'y Stat."), filed November 9, 2011, ¶ 1; Ex. 1, Note) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 1.)

Petitioner failed to make payment on the Note. (*Id.* at ¶ 2.) Consequently, the lender assigned the Note to the United States of America under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 2; Ex. 1, p. 5; Ex. 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated November 8, 2011, ¶ 3.)

HUD's attempts to collect the alleged debt from Petitioner have been unsuccessful. (Sec'y Stat. ¶ 3; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$20,870.99 as the unpaid principal balance as of October 30, 2011;
- (b) \$704.90 as the unpaid interest on the principal balance at 1% per annum through October 30, 2011;
- (c) \$732.85 as the unpaid penalties and administrative costs as of October 30, 2011; and
- (d) interest on said principal balance from October 31, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 18, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 5.) 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. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) To date, Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.)

A Wage Garnishment Order was issued to Petitioner's employer on August 18, 2011. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 7.) As of October 12, 2011, Petitioner's wages have been garnished three times, in the amounts of \$89.74, \$113.68, and \$107.11. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 8.)

Based upon Petitioner's pay statement, the Secretary suggests a proposed repayment schedule of \$107.11 bi-weekly, which constitutes 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 9.)

## Discussion

The Secretary has the initial burden of proof to show the existence and amount of the debt that is the subject of this case. 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 or unenforceable. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of any proposed 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.*

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including the sworn testimony of the Director of HUD's Asset Recovery Division, a copy of the Note, and a copy of the Note's assignment to HUD, setting forth corroborated evidence of Petitioner's debt to HUD. I find that the Secretary has therefore met his initial burden of proof.

Petitioner does not dispute the existence or enforceability of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed October 5, 2011.) Rather, she contests the amount of the debt and asserts that a garnishment in the amount requested by the Secretary will create a significant financial hardship. (*Id.* at 1.) In her Hearing Request, Petitioner checked the box marked "Amount of the debt – I do not owe the full amount of the debt." However, she does not address why she believes the amount of the debt is incorrect, and she has filed no evidence suggesting the amount is erroneous. In the absence of any evidence to the contrary, I find that Petitioner is liable for the debt claimed by the Secretary in this case.

Petitioner has, however, provided substantial documentation in support of her claim of financial hardship, including a Financial Statement of Debtor<sup>1</sup>, pay statements, bank statements, and evidence of her disposable income. (See Pet'r's Hr'g Req; Petitioner's Letter and Financial Records ("Pet'r's Financial Docs."), filed October 31, 2011.)

Disposable income is defined as "that part of the debtor's compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). Payments for essential monthly household expenses are considered against the disposable income figure prior to determining if a wage garnishment will create a financial hardship.

Petitioner has filed copies of her pay statements from October 24, 2010, to October 8, 2011. (Pet'r's Financial Docs., pp. 59-64.) The Secretary's proposed repayment schedule is based on Petitioner's August 25, 2011 - September 8, 2011 pay statement, a period in which she worked 65 hours. A close examination of Petitioner's statements shows that these pay statements do not accurately reflect Petitioner's normal work hours. Consequently, a repayment schedule based on this figure paints an unrealistic picture of Petitioner's financial situation. The Court believes that a repayment calculation based upon Petitioner's average hours worked would be more appropriate. The statements reveal an average of 46.15 hours per period, for a gross bi-weekly income of \$647.50. This income is deducted in the following amounts: federal income

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<sup>1</sup> Petitioner's financial statement mostly describes the finances of Petitioner's husband, not Petitioner herself. However, because Petitioner's salary information appears on the statement under the heading for "Spouse/Companion," and her legally mandated deductions are listed on Petitioner's pay statements, the record contains all necessary information to allow a complete analysis.

tax, \$54.00; social security tax, \$40.15; Medicare, \$9.39; Ohio state income tax, \$10.84; and City of Massillon income tax, \$11.66. (*Id.*) Petitioner thus claims a net disposable bi-weekly income of \$521.46, or a monthly income of \$1,042.92. Petitioner's evidence also shows that her husband contributes \$1,437.84 in net income per month, for a total household income of \$2,480.76 per month. (Pet'r's Hr'g Req., p. 5.)

Offsetting this income are payments for the following essential monthly household expenses: rent, \$838.04; car insurance, \$459.06; natural gas, \$80.70; electricity, \$162.50; and telephone, \$62.50. (Pet'r's' Financial Docs.) Claimed expenses of \$100 for prescription medication and \$63.50 for home insurance will not be credited because Petitioner has failed to provide evidence substantiating these figures. A \$47.81 expense for cable television will also not be credited, as the Court does not consider cable television to be an essential expense.

Petitioner also claims monthly expenses of \$400 for food and \$300 for gasoline. (*Id.*) While Petitioner's bank statements show multiple purchases at gas stations and grocery stores, they do not show with particularity what products were purchased, or that those products constitute essential household goods. However, this Court has held that credit may be given for certain essential household expenses, despite insufficient documentation, when the "financial information submitted by Petitioner ... [was found to be] generally credible...." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). Petitioner's claimed costs for food and gasoline are generally consistent with price and consumption patterns, and so will be given full credit. Petitioner's household expenses will therefore be reduced to a total of \$2,302.80.

After deducting all allowable expenses, Petitioner is left with a monthly disposable income of \$177.96. A 15% garnishment of Petitioner's bi-weekly wages would reduce her income by \$156.44 each month, leaving Petitioner and her husband with less than \$25 per month with which to meet their other obligations. I therefore find that a 15% garnishment would create a substantial financial hardship for Petitioner.

Finally, Petitioner requests the opportunity to enter into a payment plan to repay this debt. (Pet'r's Financial Docs., p. 1.) While this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

The Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. However, this Office finds that Petitioner has provided sufficient documentary evidence to substantiate her claim that the proposed repayment schedule would constitute a financial hardship. Consequently, I find that a wage garnishment of any amount would be inappropriate at this time.

**ORDER**

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place **INDEFINITELY**. For the reasons stated above, it is

**ORDERED** that the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at this time.

**However, the Secretary shall not be prejudiced from re-filing this action in the future if Petitioner's income increases or Petitioner's expenses are mitigated.**



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H. Alexander Manuel  
Administrative Judge

January 10, 2012