

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

In the Matter of:

**DONNA KING,**

Petitioner

HUDOA No.: 12-M-CH-AWG29

Claim No.: 780733066

Date: June 7, 2012

**DECISION AND ORDER**

On December 14, 2011, 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, 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a debtor. This 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 proof to show the existence and amount of the 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 December 19, 2011 this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral, dated December 19, 2011.)

**Background**

On or about March 19, 2009, Petitioner executed a Promissory Note and Truth in Lending Disclosures (“the Note”). (Secretary’s Statement (“Sec’y Stat.”), ¶ 1, filed January 5, 2012; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center (“Sautter Decl.”), ¶ 3, filed January 5, 2012.) After Petitioner defaulted on the Note, the Bank of New Orleans assigned the Note to HUD pursuant to the regulations governing the Title I insurance program. (Sec’y Stat., ¶ 2; Sautter Decl., ¶ 3.)

HUD has made efforts to collect on the Note from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 3; Sautter Decl., ¶ 4.) Thus, Petitioner remains in default. Petitioner is indebted to HUD in the following amounts:

- (a) \$ 24,244.68 as the unpaid principal balance as of December 30, 2011;
- (b) \$ 764.76 as the unpaid interest on the principal balance at 1% per annum through December 30, 2011;
- (c) \$ 1,529.84 as the unpaid administrative costs and penalties as of December 30, 2011; and
- (d) interest on said principal balance from December 31, 2011 at 1% per annum until paid.

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

On October 26, 2011, Petitioner was sent a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings. (Sautter Decl., ¶ 5.) Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, but Petitioner failed to enter into any such agreement. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 6.)

The Secretary determined that Petitioner has a bi-weekly disposable income of \$1,431.93 after allowing deductions for federal income taxes, Louisiana state taxes, Medicare, and medical, dental, and vision insurance. (Sautter Decl., ¶ 8.) The Secretary's proposed repayment schedule is \$214.78 bi-weekly or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 7; Sautter Decl., ¶ 8.) This amounts to \$429.56 per month.

### Discussion

Petitioner does not dispute the existence or amount of the alleged debt. Rather, Petitioner maintains that the Secretary's proposed repayment schedule will create a financial hardship. (Petitioner's Letter ("Pet'r's Letter"), filed March 23, 2012.) Petitioner may present evidence that the terms of the repayment schedule...would cause a financial hardship to the debtor. 31 C.F.R. § 285.11(f)(8)(ii).

In support of her position that the Secretary's proposed repayment schedule would result in a financial hardship, Petitioner has submitted several financial documents to this Court. The documents submitted by Petitioner indicate that she has monthly expenses in the following amounts: energy, \$185.40; mortgage, \$1,249.37; gasoline, \$960.00; phone, \$180.00; water, \$52.00; and food, \$400.00. (Pet'r's Letter, Attachments.) This Court has previously held that reasonable credit may be given for certain monthly living expenses such as food, rent, and utilities when determining whether a proposed wage garnishment will result in a financial hardship for the petitioner. *See Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). However, Petitioner will only be given credit for essential household expenses. *See Gary Cannady*, 08-M-CH-AWG26 (June 12, 2009). While food and phone expenses are deemed to be essential household expenses, this Court finds that Petitioner's alleged \$400.00 monthly food expense and \$180 phone expense are excessive. Petitioner does not claim any dependents and does not provide any documentary evidence as to how she arrived at these figures.

Therefore, Petitioner will only be given credit for \$250 for monthly food expenses and \$100 for monthly phone expenses. Petitioner will be given credit for the other expenses above for the amounts listed. The sum of Petitioner's allowable monthly expenses amounts to \$2,796.77.

Petitioner has also submitted evidence that she has outstanding debts owed to Wells Fargo, Dow Louisiana Federal Credit Union, Target, Lowes, and Capital One. (Pet'r's Letter, Attachments.) However, the documents submitted by Petitioner do not indicate the nature of the purchases that caused her to incur the debts owed to Wells Fargo, Target, Lowes, or Capital One. Without an evidentiary showing that these debts were incurred for the purchase of necessities, credit will not be given to Petitioner for those obligations. Furthermore, Petitioner's indebtedness to Dow Louisiana Federal Credit Union appears to be for a Yamaha motorcycle. Petitioner does not assert that this motorcycle is her primary vehicle, so she will not receive credit for that outstanding debt either. It also appears that Petitioner has a delinquent student loan with Fedloan, a Department of Education Servicer. (*Id.*) The document Petitioner filed relating to the student loan does not provide the amount of the outstanding loan or a proposed repayment schedule. Therefore, Petitioner will not receive credit for this expense.

As previously stated, the Secretary has determined that Petitioner has a bi-weekly disposable income of \$1,431.93. (Sautter Decl., ¶ 8.) This equates to a monthly disposable income of \$2,863.93. After deducting Petitioner's allowable monthly expenses of \$2,796.77 from her monthly disposable income, she is left with \$67.09 for any other expenses that may arise. If the Secretary's proposed bi-weekly garnishment rate of \$214.87 or 15% of Petitioner's disposable income is allowed, Petitioner's monthly expenses will exceed her monthly income by \$362.47. This would create an obvious financial hardship for Petitioner. While Petitioner has not proposed an alternative rate of garnishment, this Court has the authority to order a garnishment rate of a lesser amount based upon the record before it. 31 C.F.R. § 285.11(f)(11)(ii)-(iii); 31 C.F.R. § 285.11(k)(3). However, in this case, even a wage garnishment rate of 5% would result in Petitioner facing a financial hardship.<sup>1</sup>

While the Secretary has indeed shown that the debt that is the subject of this matter is legally enforceable against Petitioner in the amount determined by the Secretary, Petitioner has successfully shown that a garnishment would constitute a financial hardship sufficient to justify the suspension of wage garnishment at this time. However, the Secretary shall not be prejudiced from seeking administrative wage garnishment in the future if Petitioner's income increases or his essential household expenses are reduced.

Lastly, in her letter to this Court filed on March 23, 2012, Petitioner expressed a desire to enter into a repayment agreement that would be satisfactory to both herself and HUD. (Pet'r's Letter.) While Petitioner may seek to negotiate repayment terms with HUD, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may want to discuss this matter with Lester J. West, Director, Housing and Urban Development, Albany, NY 12203-5121. His telephone number is 1-800-669-5152,

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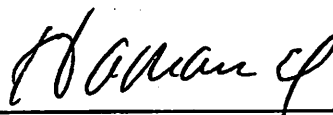
<sup>1</sup> A 5% rate of garnishment based on Petitioner's monthly disposable pay results in a garnishment amount of \$143.20 per month or \$71.60 bi-weekly. As stated above, after Petitioner's monthly expenses are deducted from her monthly disposable pay she is left with \$67.09 per month to meet any unforeseen expenses. Should a 5% wage garnishment be imposed Petitioner's expenses would exceed her income by \$76.11.

extension 4206. Petitioner is free explore this option, as the stay of the wage garnishment at this time is only temporary and does not preclude the Secretary from attempting to collect this debt via administrative wage garnishment in the future should Petitioner's financial circumstances change.

**ORDER**

For the reasons set forth above, 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**. It is hereby

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



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H. Alexander Manuel  
Administrative Judge

June 7, 2012