

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

In the Matter of:

JOHN D. McGUIRE,

Petitioner

HUDOHA No. 12-M-NY-AG99

Claim No. 52-0883319XV

February 11, 2013

DECISION AND ORDER

On June 20, 2012, John D. McGuire (“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 “the 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 federal government.

The Secretary of HUD has designated the administrative judges of this Office 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 requested and continuing until a written decision has been rendered.

Background

On October 4, 1990, Petitioner executed a Mobile Home Transfer of Equity Agreement (“Transfer Agreement”) in which he acquired the equity, title, and interest in a manufactured home, in exchange for assuming the payment obligations under the retail installment contract and security agreement executed by his predecessor-in-interest, Elizabeth Martin. (Secretary’s Statement (“Sec’y Stat.”), filed July 27, 2012, ¶ 2; Ex. A, Transfer Agreement.) HSA Mortgage Company (“HSA”), the assignee of the retail installment contract, consented to the transfer and Petitioner agreed to pay HSA the unpaid balance of the obligation assumed in addition to the interest. (Sec’y Stat., ¶ 3; Ex. A, Transfer Agreement.) The unpaid balance on the retail installment contract assumed by Petitioner was \$11,667.77. (Sec’y Stat., ¶ 4; Ex. A, Transfer Agreement.)

The retail installment contract was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (Sec’y Stat., ¶ 2.) HSA was defaulted as an

issuer of Mortgage Backed Securities (“MBS”) due to its failure to comply with the program requirements of HUD’s Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”). (*See* Declaration of Leslie A. Meaux, Director, Ginnie Mae (“Meaux Decl.”), dated July 18, 2012, ¶ 4.) As a result, all HSA rights and interest in Petitioner’s loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between HSA and Ginnie Mae. (*Id.*) Given that Petitioner is currently in default, Ginnie Mae is entitled to avail itself of all available remedies in order to obtain repayment from Petitioner. (Meaux Decl., ¶ 5-6.)

HUD’s attempts to collect the debt from Petitioner have been unsuccessful. Sec’y Stat., ¶ 8; Meaux Decl., ¶ 6.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,823.54 as the unpaid principal balance;
- (b) \$1,512.52 as the unpaid interest on the principal balance from July 18, 2012 at 12.75% per annum until paid;
- (c) \$1,437.84 as the administrative cost; and
- (d) \$985.74 as the penalty

(Meaux Decl., ¶ 6; *See* Sec’y Stat., ¶ 8.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated December 15, 2011, was mailed to Petitioner, in accordance with 31 C.F.R. 285.11(e). (Sec’y Stat., ¶ 9; Meaux Decl., ¶ 7.) The Garnishment Notice afforded Petitioner the opportunity to enter into a written repayment agreement, as required by 31 C.F.R. 285.11 (e)(2)(ii). (Sec’y Stat., ¶ 10; Meaux Decl., ¶ 7.) The record does not show that Petitioner has entered into such an agreement. (Sec’y Stat., ¶ 10.)

The Secretary proposes a repayment schedule of 10% of Petitioner’s disposable monthly income. (Sec’y Stat., ¶ 11; Meaux Decl., ¶ 9.)

Discussion

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 the debt does not exist or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the 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 debt in this case, the Secretary has filed a statement supported by documentary evidence, including a copy of the Transfer Agreement and

the sworn testimony of the Director of Ginnie Mae. (Ex. A; Ex. B.) Accordingly, I find that the Secretary has 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 June 20, 2012.) Rather, he asserts that a garnishment in the amount requested by the Secretary will create a "financial hardship." (*Id.* at 1.) Petitioner has provided substantial documentation in support of his claim of financial hardship, including a Consumer Debtor Financial Statement, pay statements, bank statements, and evidence of his disposable income. (See Pet'r's Hr'g Req; Petitioner's Financial Records (Pet'r's Financial Docs.), filed October 3, 2012.)

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 financial hardship.

Petitioner has filed a copy of one pay statement from September 6, 2012, which reflects a gross bi-weekly income of \$1,520. (Pet'r's Financial Docs.) The following deductions leave Petitioner with a net disposable bi-weekly income of \$1,333.46, or a monthly income of \$2,666.92: health insurance, \$79.52; social security tax, \$60.50; Medicare, \$20.88; federal withholding, \$1.20; and South Carolina state withholding tax, \$24.44. (*Id.*)

Offsetting this income are payments for the following essential monthly household expenses: rent, \$250; electricity, \$183.83; water, \$48.25; student loans, \$756.32; car payment, \$583.52; car insurance, \$232.52; and cellphone, \$256.94. (Pet'r's Hr'g Req; Pet'r's Financial Docs.) However, the following are not necessary expenses and will not be credited as such: cable television, \$189.32; life insurance, \$50.12; debt for "underdeveloped lot," \$191.09; and unsubstantiated credit card debt. (Pet'r's Hr'g Req; Pet'r's Financial Docs.) Moreover, Petitioner seeks credit of a \$464.27 installment for the mobile home in question. (Pet'r's Hr'g Req.) This, however, will not be credited, for there is no evidence that establishes that this installment was actually paid: neither the bill for the installment nor Petitioner's bank statements show that Petitioner met this obligation. (See Pet'r's Financial Docs.)

Petitioner also claims monthly expenses of \$250 for groceries, and \$150 for gasoline. (Pet'r's Hr'g Req.) While Petitioner's bank statements show multiple purchases at grocery stores and gas stations, 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...." *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. As a result, Petitioner's household expenses will therefore be reduced to a total of \$2,711.38.

After deducting all allowable expenses, Petitioner is left with a deficit of \$44.46. A 10% garnishment of Petitioner's monthly income would leave Petitioner and his 12-year-old daughter with a deficit of \$311.15. I therefore find that a 10% garnishment would create a substantial financial hardship for Petitioner.

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

For the reasons set forth above, the Order imposing the stay of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place **INDEFINITELY**. 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.

/s/

H. Alexander Manuel
Administrative Judge