

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

In the Matter of:

FLOYD A. CRISP,

Petitioner

HUDOHA No. 13-AM-0049-AG-015

Claim No. 780742638-0A

April 3, 2013

RULING AND ORDER UPON RECONSIDERATION

On March 5, 2013, Petitioner Floyd A. Crisp ("Petitioner") filed a letter with this Office. This letter is deemed to be a Motion for Reconsideration of the Decision and Order in *In re Floyd A. Crisp*, HUDOHA No. 13-AM-0049-AG-015 (February 20, 2013) ("Decision"). In the Decision, the Court found that a 15% wage garnishment would not create a substantial financial hardship for Petitioner. (Decision, at 3.) The Court ruled that the subject debt was due and payable, and that the Secretary of the U.S. Department of Housing and Urban Development was authorized to seek administrative garnishment of up to 15% of Petitioner's wages in order to satisfy the debt. (*Id.* at 3-4.)

Reconsideration of a prior decision is within the discretion of the administrative judge and will not be granted "in the absence of compelling reasons, e.g., newly discovered material evidence or clear error of fact or law." *See Paul Dolman*, HUDBCA No. 99-A-NY-Y41 (Nov. 4, 1999); *Anthony Mesker*, HUDBCA No. 94-C-CH-S379 (May 10, 1995); *William G. Grammer*, HUDBCA No. 88-3092-H607 (Mar. 7, 1988). Further, "it is not the purpose of reconsiderations to afford a party the opportunity to reassert contentions that have been fully considered and determined." *See Seyedahma Mirhosseini*, HUDBCA No. 95-A-SE-2615 (Jan. 13, 1995); *Charles Waltman*, HUDBCA No. 97-A-NY-W196 (Sept. 21, 1999).

In the Motion for Reconsideration of March 5, 2013, Petitioner alleges that the garnishment amount authorized in the Decision is "too much" and that it will cause financial hardship. Moreover, Petitioner respectfully requests the Court to revisit its financial hardship analysis because the amount in question was "based on [his] gross income." Petitioner, who concedes that he initially failed to file documentation that would have allowed the Court to determine his disposable income prior to issuing the Decision, has filed several pay statements. This new evidence is crucial in accurately determining whether any garnishment would create a substantial financial hardship on Petitioner. As a result, the Court will reconsider Petitioner's case in light of the several pay statements that Petitioner filed. *See* 31 C.F.R. §285.11(k).

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 then considered against the disposable income figure prior to determining if a wage garnishment will create financial hardship.

Although Petitioner submitted several pay statements, Petitioner failed to include pay statements from the same month. As a result, the Court is forced to make inferences to determine Petitioner’s disposable income. Petitioner’s pay statements reflect a bi-weekly gross salary income of \$1,153.85, or \$2,307.70 per month. Additionally, Petitioner’s pay statements show that Petitioner has periodically earned an average bonus of \$1,052.02 per month, which makes Petitioner’s monthly gross income \$3,359.72. Using Petitioner’s pay statements from January (without the bonus) and November (with the bonus), Petitioner is responsible for \$1,284.86 per month in state and federal taxes and withholdings, including insurance (health, dental, vision). As a result, Petitioner’s disposable income is \$2,074.86 per month.

In the more recent Consumer Debtor Financial Statement, Petitioner reported that Petitioner’s spouse, Katie Crisp, has a gross monthly income of \$2,240. (Pet’r’s Financial Docs.) Petitioner failed to include any pay statements that would show Mrs. Crisp’s disposable income. (*Id.*) As a result, the Court will assume that Mrs. Crisp pays one-third (\$746.66) of her monthly gross income in similar taxes and withholdings mentioned above. This leaves Mrs. Crisp with a monthly disposable income of \$1,493.34, and a total household disposable income of \$3,568.20 per month.

Petitioner seeks credit for several household expenses, but did not indicate whether this economic burden is shared between Petitioner and his spouse, or falls solely on one of them. (*Id.*) Given that Petitioner’s disposable monthly income (\$2,074.86) amounts to 58.14% of the total household disposable monthly income (\$3,568.20), this Court will assume that Petitioner is responsible for 58.14% of the reported expenses. (*Id.*) The expenses discussed below reflect this view.

The following essential monthly household expenses offset Petitioner’s disposable monthly income of \$2,074.86: rent, \$813.96; electricity, \$101.16; natural gas, \$69.18; student loans, \$108.10; and cellphone, \$58.08. (*Id.*) Other essential expenses also include: car insurance, \$154.07; and tolls for work purposes, \$68.02. (Pet’r’s Hr’g Req.) However, the following are not necessary expenses and will not be credited as such: cable television, \$63.32; life insurance, \$73.99; student loans that have been deferred until June 2013, \$110.79; and unsubstantiated credit card debt. (Pet’r’s Hr’g Req; Pet’r’s Financial Docs.)

Petitioner also claims monthly expenses of \$145.35 for food, and \$218.02 for gasoline. (Pet’r’s Financial Docs.) While Petitioner’s bank statements show multiple purchases at 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 is found to be credible. *Elva and Gilbert Loera*, HUDBCA

No. 03-A-CH-AWG28 (July 30, 2004). Petitioner's claimed costs for food are generally consistent with price and consumption patterns, and so will be given full credit. Moreover, given that Petitioner's record is generally credible, the Court will credit gasoline costs. As a result, Petitioner's household expenses will therefore be reduced to a total of \$1,735.94.

After deducting all allowable expenses, Petitioner is left with \$338.92. Garnishments of 15% and 10% would leave Petitioner with a deficit of 165.04 and a surplus of \$2.95, respectively. I therefore find that a garnishment of 15% or 10% would create a substantial financial hardship for Petitioner. Garnishment in the amount of 5%, however, would leave Petitioner with a surplus of \$170.93. As a result, I find that a 5% garnishment would not 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. Consequently, I find that wage garnishment in the amount of 5% of Petitioner's disposable income is appropriate.

ORDER

For the reasons set forth above, Petitioner's Motion for Reconsideration is **GRANTED**.
It is

ORDERED that the administrative wage garnishment order authorized by the Decision and Order, *In re Floyd A. Crisp*, HUDOHA No. 13-AM-0049-AG-015, dated February 20, 2013, SHALL BE MODIFIED to authorize the Secretary to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 5% of Petitioner's disposable income.

SO ORDERED.



H. Alexander Manuel
Administrative Judge