

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

In the Matter of:

Elizabeth Trevino,

Petitioner

HUDOHA No. 13-AM-0078-AG-029

Claim No. 78-0750466-OA

June 24, 2013

**RULING AND ORDER UPON
THE SECRETARY'S MOTION FOR RECONSIDERATION**

On May 16, 2013, this Court issued the Decision and Order in this case finding that Petitioner is indebted to the Secretary in the amounts claimed by the Secretary. *In re Elizabeth Trevino*, HUDOHA No. 13-AM-0078-AG-029 (May 16, 2013). The Court also found that repayment of Petitioner's debt to HUD in accordance with the Secretary's Proposed Repayment Schedule would cause financial hardship for Petitioner. Accordingly, the Court limited the amount of the Secretary's proposed administrative wage garnishment to a rate of 5% of Petitioner's disposable income at that time.

On May 22, 2013, the Secretary filed his Motion to Reconsider Decision and Order ("Mot. Reconsider") seeking to "increase the amount of the wage garnishment to HUD from the 5% granted in the Decision to 15% as initially requested by HUD, or some other amount greater than 5% that the Court deems just." Mot. Reconsider, Prayer for Relief. The Secretary argues that the increase is justified based on a recalculation of the formula for determining "disposable income," under 31 C.F.R. §285.11(c), and a mathematical error in determining the remainder amount after deducting household expenses from Petitioner's monthly disposable income. Mot. Reconsider, ¶2.

Specifically, the Secretary argues that the Court should not determine disposable income based strictly upon the amount received by Petitioner as reflected by Petitioner's bi-weekly pay-check. Instead, the Secretary argues, the Court should rely upon the higher amount that would result by taking the bi-weekly pay amount, multiplying that figure by 26 (the number of pay periods in a year), and then dividing that figure by 12 (the number of months in a calendar year).

On May 23, 2013, the Court ordered Petitioner to file a response to the Secretary's Motion to Reconsider Decision and Order on or before June 17, 2013. In that Order, Petitioner was notified that:

Failure to comply with this Order may result in the imposition of sanctions to include the entry of judgment in favor of the opposing party in this case, a decision based on the documents of record, or other sanctions deemed necessary and appropriate by the Administrative Judge.

(emphasis in original). Petitioner has not filed a timely response to the Secretary's Motion to Reconsider Decision and Order, and has therefore failed to comply with the May 23, 2013 Order.

Upon consideration of the meritorious arguments presented by the Secretary, as well as Petitioner's non-compliance with the May 23rd Order, the Secretary's Motion to Reconsider Decision and Order is GRANTED, in part. In the absence of regulatory or other legal precedent for imposing the methodology for calculating disposable income suggested by the Secretary, the Court will continue to follow the long-held practice of this Court - which is to rely upon the actual amounts reflected on the bi-weekly pay statements of debtors in determining disposable income. Otherwise, the Secretary's mathematical calculations are found to be correct and are relied upon in the Court's determination, herein, that a 15% garnishment of Petitioner's disposable income would not result in financial hardship to Petitioner in this case.

Accordingly, it is

ORDERED that the Decision and Order in this case, dated May 16, 2013, is **MODIFIED**, and the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.



H. Alexander Manuel
Administrative Judge