

OFFICE OF HEARINGS AND APPEALS
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-0001

In the Matter of:

Jeanie L. Kesler,

Petitioner.

Case No. 13-AM-0093-AG-039

Claim No. 780734338-OA

November 25, 2013

DECISION AND ORDER

On February 25, 2013, Jeanie L. Kesler ("Petitioner") requested a hearing concerning the existence, amount or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 by debtors.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate 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. § 17.81. On February 26, 2013, pursuant to 31 C.F.R. § 285.11(f)(10)(ii), the previously issued garnishment order was automatically stayed 61 days after receipt of Petitioner's Hearing Request. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), issued February 26, 2013.) The stay remains in effect until the issuance of this *Decision and Order*.

Background

On or about November 1, 2008, Petitioner executed and delivered a Manufactured Home Promissory Note, Security Agreement and Disclosure Statement ("Note") in the amount of \$42,975.69 to Vanderbilt Mortgage and Finance. (Secretary's Statement, filed March 27, 2013 ("Sec'y Stat."), ¶ 2; Ex. 1, Note.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (Sec'y Stat. ¶ 3; Ex. 2, Declaration of Kathleen M. Porter¹, ("Porter Decl."), ¶¶ 2-3.)

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. (Sec'y Stat. ¶ 5; Ex. 2, Porter Decl. ¶ 4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$19,211.78 as the unpaid principal balance as of February 28, 2013;
- (b) \$208.00 as the unpaid interest on the principal balance at 1.0% per annum through February 28, 2013;

¹ Kathleen M. Porter is the Acting Director of the Asset Recovery Division of HUD's Financial Operation Center.

- (c) \$1,224.82 as the unpaid penalties and administrative costs as of February 28, 2013; and
- (d) Interest on said principal balance from March 1, 2013 at 1.0% per annum until paid.

(Ex. 2, Porter Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated December 4, 2012 was mailed to Petitioner, in accordance with 31 C.F.R. § 285.11(e). (Sec’y Stat. ¶ 6.) 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). Id. The record does not show that Petitioner has entered into such agreement. Id. Accordingly, the Secretary propose a repayment schedule of 15% of Petitioner’s disposable pay. (Sec’y Stat. ¶ 8.)

Discussion

The Secretary bears the initial burden of proof to show 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 no debt exists 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 Petitioner’s indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner and the sworn declaration of the Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center. (Sec’y Stat., Ex. 1, Ex.2.) Accordingly, the Court finds the Secretary has met his initial burden.

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 Hearing Request, (Pet’r Hr’g Req.) filed February 25, 2013.) Specifically Petitioner claims “I can’t afford 30% that’s being garnished from my check monthly. I’m having a hard time paying my monthly bills.” (Pet’r Hr’g Req.) As support for her claims she provided a copy of her bi-weekly pay statement. (Sec’y Stat. ¶ 10, Ex. 2.) This document indicates that her net pay on average is \$631.37 bi-weekly. Additionally, Petitioner completed a Consumer Debtor Financial Statement listing her monthly expenses, including: rent, \$500.00; gasoline/auto repairs, \$100.00; food, \$200.00; clothing, \$20.00. (Pet’r Hr’g Req., p. 6.) Petitioner also submitted a notarized letter from her landlord, and receipts for her rent and other household expenses. (Petitioner’s Documentary Evidence (“Pet. Ev. I”), filed July 23, 2013.) The documents indicate that she makes payments to her landlord in the following amounts: rent \$500.00; personal loan \$75.00; car payment \$150.00. (Pet. Ev. I) Also the documents show that the Petitioner pays \$55.98 monthly for her insurance policy. (Pet. Ev. I.)

This Court has previously held that reasonable credit may be given for certain monthly living expenses such as food, rent and utilities, even if evidence of payment of those expenses is lacking. See Elva and Gilbert Loera, HUDBCA No. 03-A-CH- AWG28 (July 30, 2004). Although the standard of reasonable credit is necessarily fact sensitive and thus not marked by bright lines, this Court has made clear that credit will only be given for essential household expenses. See Gary Cannady, HUDOA No. 08-M-CH-AWG26 (June 12, 2009).

According to Petitioner's Consumer Debtor Financial Statement, she claims her two children as dependents, so she will be credited \$200.00 monthly for food expenses. (Pet'r Hr'g Req.) Petitioner has also confirmed her expenses for rent, car payment, and insurance, in the total amount of \$705.98. (Pet. Ev. I.) However, Petitioner's expenses for auto repairs and probation fees will not be credited, as she has not shown that these expenses recur monthly. In addition, Petitioner's expenses for clothing, storage and other non-essential items will not be credited. As a result, Petitioner's allowable monthly expenses is \$905.28.

Petitioner also submitted a copy of her pay statement for the period from January 26, 2013 to February 22, 2013. (Sec'y Stat. ¶ 10, Ex. 2.) Based on this pay statement, Petitioner's disposable income is \$631.37 bi-weekly or \$1,367.96 monthly. After deducting Petitioner's allowable monthly expenses of \$905.28 from her disposable income, she is then left with \$462.68 for any additional expenses that may arise each month.

If the Secretary's proposed garnishment rate of 15% of Petitioner's disposable pay is allowed, Petitioner is left with \$257.19 monthly. This should be sufficient to meet any unforeseen expenses Petitioner may incur.

The Secretary has successfully established the legal enforceability of the debt that is the subject of this proceeding. Petitioner has not demonstrated that repayment of this debt in the amount and manner proposed by the Secretary would create a financial hardship sufficient to justify a garnishment rate of a lesser amount at this time.

ORDER

For the reasons set forth above, the Order dated February 26, 2013, imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable pay.



H. Alexander Manuel
Administrative Judge