

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

In the Matter of:

JUANITA W. JOHNSON,

Petitioner.

HUDOHA 13-AM-0099-AG-042

Claim No. 721007232

June 19, 2013

DECISION, RULING AND ORDER UPON RECONSIDERATION

In the Decision and Order issued February 7, 2013 (“the Decision”), this Court found that Petitioner failed to provide evidence to prove that the subject debt is unenforceable or not past due. Petitioner further failed to provide evidence to support any claim that repayment of the debt would create a financial hardship for her. Specifically, this Court found that “the relatively incomplete financial documents produced by Petitioner, coupled with the lack of documentation with which to calculate Petitioner’s disposable pay or income, compels the Court to reach a finding that financial hardship has not been demonstrated.” *In re Juanita W. Johnson*, HUDOA 13-M-CH-AG-116, at p.5 (February 7, 2013.) Consequently, this Court vacated the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment and issued an order authorizing the Secretary to seek administrative garnishment of Petitioner’s wages to satisfy this debt. *Id.*, at 5.

On March 21, 2013, Petitioner filed a letter requesting reconsideration of the finding that the amount currently being garnished from her wages did not create a financial hardship. Petitioner filed several documents in support of her claim that repayment of the debt in the amount proposed by the Secretary would cause financial hardship for her. (Petitioner’s Letter (“Pet’r’s Ltr.”), dated February 15, 2013; Petitioner’s Documentary Evidence (“Pet’r’s Doc. Evid.”), filed March 21, 2013.) In her letter, Petitioner did not raise the issue of whether or not she owed the debt, or whether or not the debt is unenforceable. Accordingly, the finding in the Decision that Petitioner failed to produce evidence that this debt is unenforceable or not past due is affirmed and this Decision and Order Upon Reconsideration will only address Petitioner’s financial hardship claim.

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

In support of her financial hardship claim, Petitioner filed pay statements for two bi-weekly pay periods reflecting an average gross income of \$1252.00 bi-weekly, or \$2504.00 monthly. (Pet'r's Doc. Evid.) The Secretary is authorized to garnish up to 15 percent of a debtor's disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay, including salary and bonuses. 31 C.F.R. § 285.11(i)(2)(i). Petitioner's pay statements specify that \$287.29 is withheld for taxes biweekly and \$91.00 for health insurance biweekly, leaving Petitioner with disposable pay, on average, of \$873.71 biweekly, or \$1747.42 monthly. (Pet'r's Doc. Evid.) The Secretary seeks garnishment in the amount of 15 percent of Petitioner disposable pay, which is \$131.06 biweekly, or \$262.12 monthly. After applying a 15 percent wage garnishment to Petitioner's disposable pay, Petitioner is left with about \$1485.30 monthly to cover her essential household expenses.

As evidence of her household expenses, Petitioner filed various bills, many of which were past due and currently in collection. Petitioner submitted the following monthly bills: rent to the Housing Authority Birmingham District, \$372.00; car payment to Ally, \$462.17; and State Farm car and homeowners insurance, \$219.60 monthly. Petitioner also submits two bills with unpaid balances: HSBC credit card statement, \$362.00; and Vision America of Alabama, \$135.00, or \$50 monthly until repaid. (Pet'r's Doc. Evid.)

Although Petitioner submitted a bill for car and homeowners insurance totaling \$219.60 monthly, a review of the bill showed that Petitioner's monthly payment is for two cars and a home. Id. Therefore, this Court will credit Petitioner for two-thirds of the insurance bill, or \$146.40, including only one car as an essential expense. In addition, Petitioner's HSBC credit card statement does not appear to contain charges related to essential household expenses and will therefore be excluded. Also included in the filings was Petitioner's credit report and bank of America Escrow Account statements, which are of little use in determining financial hardship. (Pet'r's Doc. Evid.) While Petitioner has not provide evidence of food costs, this Court has previously 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 will therefore be credited with the amount of \$150 per month for this expense.

After excluding Petitioner's non-essential monthly expenses, the Court finds that Petitioner has submitted documentary evidence of essential household expenses totaling \$1,180.57 monthly. Petitioner's disposable pay of \$1747.42 less her essential household living expenses of \$1,180.57 leaves Petitioner with \$566.85 monthly. \$566.85 less the proposed garnishment amount of \$262.12 leaves Petitioner with \$303.88 monthly for any additional household expenses or pay down the past due amounts on many of her accounts. Accordingly, the Court finds that Petitioner has not met her burden to prove that administrative wage garnishment, in the manner proposed by HUD, would cause her financial hardship.

ORDER

For the foregoing reasons, Petitioner's *Motion for Reconsideration* is **DENIED**. It is hereby

ORDERED that the administrative wage garnishment order authorized by the Decision and Order in In re Juanita W. Johnson, HUDOA 13-M-CH-AG-116, dated February 7, 2013, shall not be modified and shall remain in full force and effect.



H. Alexander Manuel
Administrative Judge