

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

In the Matter of:

**Rita Richards,**

Petitioner.

HUDOHA 13-VH-0051-AG-017  
Claim No. 780684921

April 3, 2013

**DECISION AND ORDER**

On November 14, 2012, Rita Richards ("Petitioner") filed a hearing request 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 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.

**Applicable Law**

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing 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. The Secretary has the initial burden of proof to show the existence and amount of the 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). In addition, Petitioner may present evidence that the terms of any 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.

**Procedural History**

Pursuant to 31 C.F.R. § 285.11(f) (4), on November 14, 2012, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral* "Notice of Docketing", 2. On November 20, 2012, the Secretary filed his statement along with documentation in support of his position. Petitioner filed with her hearing request certain limited documentary evidence in support of her position. But Petitioner has not, to date, responded to subsequent orders issued by the Court for additional documentary evidence to further substantiate her financial hardship claim. This case is now ripe for review.

### Background

On October 14, 2003, Petitioner “executed and delivered a Retail Installment Contract – Security Agreement (“Note”) to Twin City Housing in the amount of \$26,807.95, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703.” *Secretary’s Statement*, “*Sec’y. Stat.*,” ¶ 2, filed November 20, 2012, Ex. A, Note. Twin City Housing also assigned the Note to Vanderbilt Mortgage and Finance, Inc. on October 14, 2003. *Sec’y. Stat.*, ¶ 3. Petitioner failed to make payment on the Note as agreed. *Sec’y. Stat.*, ¶ 4. Consequently, “in accordance with 24 C.F.R. § 201.54, on August 17, 2006, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America.” *Id.* “The Secretary is the holder of the Note on behalf of the United States.” *Sec’y. Stat.*, Ex. B.

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. *Sec’y. Stat.*, ¶ 5, Ex. C, *Dillon Decl.*, ¶ 4. As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$8,188.73 as the unpaid principal balance as of October 31, 2012;
- (b) \$1132.14 as unpaid interest on the principal balance at 4% per annum through October 31, 2012; and,
- (c) interest on said principal balance from November 1, 2012 at 4% per annum until paid.

*Sec’y. Stat.*, ¶ 5, Ex. B, *Dillon Decl.*, ¶ 4.

Pursuant to 31 C.F.R. § 285.11 (e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner on or about September 7, 2012. *Sec’y. Stat.*, ¶ 6; *Dillon Decl.*, ¶ 5. In accordance with 31 C.F.R. 285.11(e) (2) (ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. *Id.*, ¶ 6; *Dillon Decl.*, ¶ 6. To date, “Petitioner has not entered into a written repayment agreement.” *Id.*

A Wage Garnishment Order dated October 9, 2012 was sent to Petitioner’s employer. *Sec’y. Stat.* ¶ 7; *Dillon Decl.*, ¶ 8. “Based on Petitioner’s current financial situation, HUD has agreed to reduce the wage garnishment amount to \$100.00 bi-weekly.” *Sec’y. Stat.*, ¶ 9. Therefore, the Secretary “proposes a bi-weekly repayment schedule of \$100.00.” *Id.*

### Discussion

Petitioner does not deny that she owes the alleged debt but instead claims that the proposed garnishment amount would create a financial hardship. *Petitioner’s Request for Hearing*, “*H’rg Req.*,” filed November 14, 2012. As support, Petitioner submitted with her *Hearing Request* a completed Consumer Financial Debt Form on which she listed her monthly expenses. *Id.*, Attachment. She also submitted a copy of her bi-weekly pay statement. *Id.*, Attachment. A mere list of monthly expenses does not, alone, sufficiently support Petitioner’s claim of financial hardship. Petitioner also failed to produce the documentation that the Court

needed to further substantiate her list of alleged expenses and claim of financial hardship despite being ordered by the Court on three occasions to comply accordingly. *See Notice of Docketing; Order for Documentary Evidence*, dated January 23, 2013; *Order to Show Cause*, dated February 20, 2013.

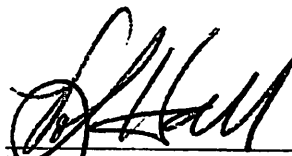
However, the Secretary met his burden of proof that Petitioner's debt is past due and legally enforceable and provided sufficient documentation that Petitioner remains legally obligated to pay the outstanding balance on the alleged debt. *Sec'y. Stat.*, Ex. A, Ex. B. After reviewing Petitioner's current financial situation, the Secretary now "has agreed to reduce the wage garnishment amount to \$100.00 bi-weekly." *Sec'y Stat.*, ¶ 9. As a result, the Secretary seeks authorization of his proposed bi-weekly repayment schedule of \$100.00 for Petitioner to satisfy the alleged debt.

While this Office is not authorized to extend, recommend, or accept any payment plan or even to consider any settlement offer on behalf of HUD, in this case, the Secretary's request seeking authorization to reduce Petitioner's bi-weekly garnishment amount from \$200.00 to \$100.00 due to financial hardship is consistent with the governing regulations. As provided in 31 C.F.R. § 285.11 (k) (3), "if a financial hardship is found, the agency shall downwardly adjust, *by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition.*" (Emphasis added.) The Secretary here agrees that a downward adjustment to \$100.00 as a bi-weekly payment in satisfaction of the alleged debt more accurately reflects Petitioner's financial condition. Therefore, I find that a downward adjustment of Petitioner's bi-weekly repayment schedule to \$100.00 is an accurate and appropriate adjustment based upon the facts in this case.

### **ORDER**

Based on the foregoing, the Order 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 and reduce the previous wage garnishment amount from \$200.00 bi-weekly to \$100.00 bi-weekly in satisfaction of the debt that is the subject of this proceeding.



Vanessa L. Hall  
Administrative Judge