

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

In the Matter of:

Melvia Ramirez

Petitioner.

HUDOHA 13-VH-0139-AG-061
Claim No. 7708211533-0B

December 31, 2013

DECISION AND ORDER

On July 2, 2013, 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 (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). Thereafter, Petitioner 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 July 2, 2013, 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 August 1, 2013, the Secretary filed his *Statement* along with documentation in support of his position. In response to a subsequent *Order for Documentary Evidence* issued on September 3, 2013, Petitioner submitted documentary evidence in support of her position on September 26, 2013. This case is now ripe for review.

Background

On November 17, 1993, Petitioner executed and delivered a Home Improvement Installment Contract and Promissory Note (Note) to Texas Remodelers Acceptance Group in the amount of \$ 19,000.00, 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.") ¶ 3, filed August 1, 2013; Ex. 2, Note. The Petitioner failed to make payments as agreed in the Note. *Sec'y. Stat.* ¶ 4. Contemporaneously, on June 12, 1995, the Note signed by Petitioner from Texas Remodelers Acceptance Group was later assigned by TMI Acceptance to HUD. *Sec'y. Stat.*, ¶ 4; *Declaration of Gary Sutter* ("Sutter Decl.") ¶ 3.

HUD has attempted to collect the amount due under the Note, but the Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 5; *Sutter Decl.*, ¶ 4. As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$ 6,787.02, as the unpaid principal balance as of June 30, 2013;
- (b) \$ 28.28 as unpaid interest on the principal balance at 5% per annum through June 30, 2013; and
- (c) interest on said principal balance from July 1, 2013 at 5% per annum until paid.

Id.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (Notice) dated August 26, 2010 was sent to Petitioner. *Sec'y. Stat.*, ¶ 7; *Sutter 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 under terms agreeable to HUD. *Sutter Decl.*, ¶ 6. Petitioner did not enter into a written repayment agreement or pay the debt in full in response to the Notice. Id.

Consequently, "on September 27, 2010, the U.S. Department of the Treasury (Treasury) issued a Wage Garnishment Order to Petitioner's employer. *Sutter Decl.*, ¶ 7. Based on the issuance of the Wage Garnishment Order, Petitioner's pay has been garnished 70 times for a total of \$12,942.61. *Sutter Decl.*, ¶ 8. Petitioner provided a copy of her bi-weekly pay statement for the period ending June 15, 2013 to the HUD Office of Appeals. *Sec'y. Stat.*, ¶ 10; *Sutter Decl.*, ¶ 9. The pay statement indicates that the Petitioner's gross pay for the pay period totaled \$1,967.84; less allowable deductions of \$358.04 (Federal WH \$171.37; Federal MED/EE \$28.05; Federal OASDI/EE \$119.92; Medical Insurance \$33.01; Dental Insurance \$.46; Vision Insurance \$.23; Mandatory Parking \$5.00) indicating a bi-weekly net disposable pay of \$1,609.80. *Sutter Decl.*, ¶ 9.

The Secretary's proposed repayment schedule is \$241.47 bi-weekly or 15% of Petitioner's monthly disposable pay. *Sec'y. Stat.*, ¶ 11. *Sutter Decl.*, ¶ 9.

Discussion

Petitioner does not deny that she owes the debt but instead argues that the terms of the proposed repayment schedule would cause her a financial hardship. Petitioner claims that, "Mortgage went up double now \$1,135.00 [...] I have paid more than $\frac{3}{4}$ on [the] loan [...] Can you removed [sic] intrest [sic] and lower my payment[?]" (*Petitioner's Hearing Request*, "H'rg. Req.", filed July 2, 2013.) Petitioner further claims that, "My house note has gone from \$550.00 to \$840.00, a big difference. I have paid on this loan by myself starting at \$1900.00 and my balance is \$5,300.00. Can you please lower my payment?" *Petitioner's Letter and Documentary Evidence* ("Pet'r's Docs."), filed September 26, 2013.

In order to prove a claim of financial hardship Petitioner must prove, by preponderance of the evidence, that the proposed terms of debt repayment would in fact create a financial hardship. 31 C.F.R. § 285.11(k)(3), 31 C.F.R. § 285.11(f)(8)(ii). In this case Petitioner submits, as support, copies of her most recent pay statement and the monthly statements for her mortgage and automobile loan payments, as well as a copy of her completed HUD Debt Resolution Program Financial Statement that reflects a list of her essential monthly household expenses. *Pet'r's Docs.*

The Secretary contends, on the other hand, that, "Even if Petitioner were to submit requisite documentation of hardship, evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable." *Sec'y. Stat.*, ¶ 9. This statement is in error. Evidence of financial hardship can be considered in cases involving an administrative wage garnishment, as is the circumstance in the present case, but, financial hardship may not be a factor for consideration in administrative offset cases. *See Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987).

While financial hardship does not invalidate a debt or release a debtor from a legal obligation to repay it, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. *Shone Russell*, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (*citing Raymond Kovalski*, HUDBCA NO. 87-1681-G18 (December 8, 1986)); *see also*, 31 C.F.R. § 285.11(k)(3). Here, the Court will consider Petitioner's income and current monthly expenses to determine whether such financial hardship is evident in this case.

First, Petitioner's disposable pay for administrative wage garnishment is calculated by deducting health insurance premiums and any amounts required by law to be withheld from Petitioner's gross pay—including social security taxes and withholding taxes, and excluding amounts withheld pursuant to a court order. 31 C.F.R. § 285.11(c). According to the record, Petitioner's most recent pay statement reflects a bi-weekly gross pay of \$1967.84. *Sec'y. Stat.*, ¶ Ex. 2 *Sutter Decl.*, ¶ 9. Petitioner's gross pay, less allowable deductions of \$358.04 (Federal WH \$171.37; Federal MED/EE \$28.05; Federal OASDI/EE \$119.92; Medical Insurance \$33.01; Dental Insurance \$46; Vision Insurance \$.23; Mandatory Parking \$5.00), results in a bi-weekly net disposable income of \$1,609.80. *Sutter Decl.*, ¶ 9.

Next, Petitioner's mortgage statement indicates that a current amount of \$837.01 is due, but it also indicates a substantial past due amount owed by Petitioner. *Pet'r's Docs.* The automobile loan statement likewise reflects both the current and past due amounts for Petitioner. Id. Petitioner wanted the Court to consider, as evidence, the sum total of her current and past due amounts per month for the mortgage and automobile loan payments, \$3328.49 and 1154.20 respectively. Id. This approach is not feasible since the status of Petitioner's delinquency on her accounts is not relevant in establishing whether Petitioner would suffer financial hardship in the future. See 31 C.F.R. § 285.11 (8)(ii) (requires debtor to produce evidence that the proposed garnishment amount *would cause* a financial hardship.) As a result, the Court decided to rely on Petitioner's current monthly amounts for the mortgage, at \$837.01, and the automobile loan, at \$577.10, to determine whether the proposed garnishment would create a financial hardship in the future.

Petitioner also introduced into evidence a copy of a completed Debt Resolution Program Financial Statement that itemized her monthly household expenses. While evidence of essential household expenses, such as rent and food, should include proofs of payment, if such proof of payment is not available, the Court will consider other financial documentation deemed credible by the Court as evidence that is sufficient to support a claim of financial hardship. David Herring, HUDO No. 07-H-NY-AWG53 (July 28, 2008) (citing Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). As a result, the Court relied on Petitioner's Financial Statement as sufficient support for the remaining household expenses.

Here, Petitioner's essential monthly household expenses include food and utilities that, together, total an additional \$250.00. The total of Petitioner's monthly expenses, including her mortgage and automobile loan payments, is \$1,664.11. Petitioner's disposable pay of \$1,609.80, less her total expenses of \$1,664.11 yields a negative balance of (-\$54.31) for Petitioner. The addition of the Secretary's proposed garnishment of 15% of her income per pay period, \$241.47, increases that negative balance to (-\$295.78). Even at a minimum five (5) percent garnishment rate, or \$80.49 monthly, Petitioner still would be left with a negative balance of (-\$26.18).

While the Secretary has successfully established that the debt that is the subject of this proceeding is past due and legally enforceable in the amount claimed by the Secretary, the Court finds that Petitioner has submitted sufficient documentary evidence to substantiate that her claim of financial hardship is warranted. Therefore, garnishment at 15% of Petitioner's disposable pay as proposed by the Secretary would constitute a financial hardship for Petitioner.

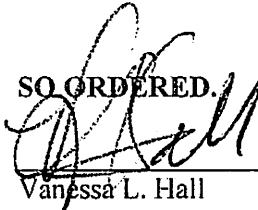
ORDER

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 shall remain in place indefinitely.

The Secretary shall not seek, at this time, collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances.

However, the Secretary shall not be prejudiced from seeking collection of the subject debt by any other means permitted by law, or, in the future, by means of administrative wage garnishment, if Petitioner's income increases or her expenses for necessities decrease.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.