

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

In the Matter of:

**LISA MIMS,**

Petitioner.

HUDOHA 14-AM-0027-AG-012  
Claim No. 780748940

July 16, 2014

Judge H. Alexander Manuel

**DECISION AND ORDER**

On November 20, 2013, Lisa Mims (“Petitioner”) filed a hearing request concerning a proposed wage garnishment sought by the Secretary relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD”). 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 U.S. government.

The HUD Secretary has designated the administrative judges of this Office to adjudicate contested 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.

**Background**

On July 17, 2006, Petitioner and her husband executed and delivered a Note to Domestic Bank in the amount of \$25,000.00. (Secretary’s Statement (“Sec’y Stat.”), ¶ 2, filed June 27, 2013; Ex. A, Note.) The Note was insured against nonpayment by HUD pursuant to Title I of the National Housing Act. *Id.* Petitioner defaulted on the Note. *Id.* at ¶ 3. Domestic Bank thereafter assigned the Note to HUD, in accordance with 24 C.F.R. § 201.54. *Id.*; Ex. B, Assignment.

The Secretary has attempted to collect this debt from Petitioner, but has been unsuccessful. (Sec’y Stat., ¶ 4; Ex. C, Declaration of Brian Dillon<sup>1</sup> (“Dillon Decl.”), ¶ 4.) As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$20,821.08 as the unpaid principal balance as of November 30, 2013;
- b) \$820.29 as the unpaid interest on the principal balance at 1% per annum through November 30, 2013;

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<sup>1</sup> Brian Dillon is Director of the Asset Recovery Division at HUD’s Financial Operations Center in Albany, N.Y.

- c) \$1,323.41 as the unpaid administrative penalties and administrative costs as of November 30, 2013; and
- d) interest on said principal balance from December 1, 2013 at 1% per annum until paid.

(Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated September 12, 2013, was mailed to Petitioner. (Sec'y Stat., ¶ 5; Dillon Decl., ¶5.) In accordance with 31 C.F.R. § 285.11(e)(2(ii)), the Notice of Intent afforded Petitioner the opportunity to enter into a written repayment agreement to resolve the debt. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) Petitioner did not enter into a repayment agreement. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.)

The Secretary was unable to obtain a copy of Petitioner's pay statement, and so proposes a repayment schedule of 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.) Alternatively, the Secretary proposes a garnishment of \$637.91 per month, which will liquidate the debt in three years as recommended by the Federal Claims Collection Standards. (Sec'y Stat., ¶ 7; Dillon Dec., ¶ 7.)

### **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, the amount of the debt is incorrect or unenforceable, or that the terms of the proposed repayment schedule would cause financial hardship. Id.

As evidence of the existence and amount of the debt, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Director of HUD's Asset Recovery Division. I therefore find that the Secretary has met his initial burden of proof.

Petitioner does not dispute the amount of the debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), received November 21, 2013.) Rather, she contends that (1) the terms of the proposed repayment schedule would cause her a financial hardship because she cannot pay the proposed garnishment amount while also managing her household expenses, (2) she no longer lives at the subject property, and (3) she is willing to enter into a repayment plan at a lesser monthly rate. Id. I, therefore, find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Shone Russell, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (citing Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, if financial hardship is found, the agency may "downwardly adjust" the garnishment amount to reflect the debtor's financial condition. 31 C.F.R. §§ 285.11(k)(3). The burden is on the Petitioner to present

sufficient evidence that the terms of the proposed repayment schedule would cause such financial hardship. 31 C.F.R. § 285.11(f)(8)(ii).

In support of her claim, Petitioner submitted a Consumer Debtor Financial Statement (“Financial Statement”) that lists her monthly expenses. (Pet’r’s Hr’g Req., p. 4.) According to the Financial Statement, Petitioner’s expenses include: mortgage (\$3,800), child support (\$560), car payment (\$1,220), gasoline and auto repairs (\$1,000), electricity(\$320), natural gas (\$300), food (\$1,050), cable (\$490), medical expenses (\$100), clothing (\$200), oil (\$500), car insurance (\$370), telephone (\$590), and other expenses. In all, Petitioner claims monthly expenses of \$11,575 per month.

On November 21, 2013, the Court issued a *Notice of Docketing Order, and Stay of Referral*, ordering Petitioner to file documentary evidence to support her claim of financial hardship. On January 27, 2014, the Court issued a subsequent *Order for Documentary Evidence*, informing Petitioner that:

... proof [of financial hardship] must be in the form of documentary evidence and must consist of pay statements and proof of actual payment of necessary household expenses, e.g., receipts, bank statements, and copies of checks, money orders, etc., for payment of mortgage, food, necessary medical expenses, and other basic household necessities.

(Order for Documentary Evidence, issued January 27, 2014.)

On February 18, 2014, one day after Petitioner’s documentary evidence was due, she filed a *Motion for Extension of Time* (“Motion”) to compile and submit her evidence. The Court issued a ruling granting the *Motion* the same day. (Ruling and Order Granting Extension of Time (“Second Order”), issued February 19, 2014.) The *Second Order* contained the above-quoted language from the *Order for Documentary Evidence*.

On March 21, 2014, Petitioner submitted additional documentary evidence, including a pay statement for a pay period beginning on March 1, 2014, and ending on March 15, 2014. (Petitioner’s Documentary Evidence (“Pet’r’s Doc. Evid.”), filed March 21, 2014.) She also stated that she is now separated from her husband and he no longer lives with the family or contributes to the household expenses. *Id.* Petitioner claims that she is enrolled in a trial mortgage modification program on her first mortgage and is on a payment plan with her utility provider. *Id.* She reiterates that the proposed garnishment would constitute “an extreme hardship” under her current economic circumstances.

After deducting Petitioner’s allowable deductions from her gross pay, Petitioner’s disposable income is \$2,331.17 bi-weekly, or \$4,662.34 monthly. Payments for essential monthly household expenses are considered against the disposable income figure prior to determining if a wage garnishment will create a financial hardship. *See Carolyn Reed*, HUDOA No. 12-M-CH-AWG05 (January 20, 2012). In this case, however, the Court is unable to determine whether the proposed garnishment would create a financial hardship because it cannot accurately calculate Petitioner’s monthly expenses.

In addition to the expenses listed in her Financial Statement, Petitioner has also submitted copies of her bank account statements for the months of January through March, 2014; and a mortgage modification approval letter related to her primary mortgage. The bank statements show multiple purchases at gas stations, grocery stores, and other outlets, but they do not show with particularity what products were purchased, or that those products constitute essential household goods. This Court has 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....” Reed, p. 4 (citing Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In this case, and based on Petitioner’s submissions, the Court is unable to determine with any substantial degree of specificity, the credibility of Petitioner’s household expenses that she claims were necessarily incurred.

For example, Petitioner’s Financial Statement lists a monthly mortgage of \$3,800. However, the trial mortgage modification letter from Caliber Home Loans states that her total monthly payment is \$1,906.13 before the modification, and only \$1,422.46 afterwards. Petitioner therefore pays, at most, half the mortgage amount she asserts. If she does pay a second mortgage, as she states, there is no evidence of it in the record. Petitioner also claims to pay \$560 per month in child support payments. Yet, her Financial Statement identifies three dependents living in the home: Darryl Thompson, 19; Isaiah Mims, 19; and Aaron Mims, 16. The Court presumes these are Petitioner’s children, making it highly unlikely that Petitioner would be responsible for paying child support. Moreover, there is nothing in her bank statements that corresponds to the purported child support amount. Petitioner lists a monthly car payment of \$1,220. Although her car insurance payments of approximately \$370 are reflected on her bank statements, this Court finds that a monthly car payment of \$1,220.00 is excessive, and is not a necessary household expense.

Many of Petitioner’s other expenses appear unreasonably high, with no explanation for the excessive figures. She asserts that she pays \$590 per month for phone service, and her bank statement does show one payment of \$560 for “Capital One Phone Pymt.” However, Petitioner did not submit a copy of her phone bill. The Court therefore cannot determine if this is her actual monthly rate or a one-time outlier expense. Moreover, her evidence also shows payments of approximately \$107 per month to Sprint, suggesting she has both a landline phone and cellular phone service. Given that Petitioner apparently already has telephone service, the Court cannot consider a nearly \$600 phone bill to be an essential household expense. She also asserts \$600 in combined electricity and natural gas expenses. This is not corroborated in her bank statements, as the only utility payment listed there is for \$155. Petitioner also claims \$1,000 per month in gasoline and auto repairs, and another \$1,050 per month for food. She includes no receipts to substantiate these claims.<sup>2</sup> As such, her figures cannot be credited. Finally, Petitioner claims \$500 per month for oil. Her bank statements show only one oil purchase, for \$365 at Franco Fuel Oil.

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<sup>2</sup> Petitioner’s bank statements reflect some grocery and restaurant charges, but the sum of the charges is much lower than what is claimed by Petitioner. There are also payments of \$540 and \$122 to Citgo, presumably for gasoline. However, there is no evidence that this is a recurring expense, and Petitioner fails to explain the necessity for a vehicle to consume \$540 worth of fuel on a single trip.

Petitioner also lists several unidentified, non-recurring, or non-essential expenses that cannot be credited. For example, she claims a \$490 monthly cable/satellite TV bill, as well as \$200 for clothing, and \$100 for credit cards. The Court does not consider these to be essential household expenses. She also asserts a \$500 expense for "school," \$200 for "MDC," and \$125 for "Belden [illegible]." There is no further explanation of any of these alleged expenses. Without knowing what these expenses were for, the Court cannot credit them. See Rebecca L. Kogut, HUDOHA No. 13-AM-0128-AG-056 (November 7, 2013).

Upon review, the Court finds that Petitioner's documentary evidence is insufficient to support the approximately \$11,500 in claimed expenses. At best, Petitioner has provided credible evidence of \$1,422.46 in mortgage, \$370 in car insurance, \$365 in fuel oil, and \$107 for telephone service, for a total of \$2,264.46 in deductible expenses. She has a monthly disposable income of \$4,662.34. A garnishment in the amount requested by the Secretary would leave her with a net monthly balance of \$1,759.97. I therefore find that no financial hardship is caused by the Secretary's proposed repayment schedule.

Petitioner next contends that she no longer resides at the subject property: 30 Pine Grove Road, Bloomfield CT 06002. She does not, however, suggest that she did not receive notice of the debt. The Notice of Intent was mailed to 25 Jackson Road, Bloomfield CT 06002. Petitioner has confirmed that this is her address, and she included the Notice of Intent in her *Hearing Request*. Since receipt of the Notice of Intent is not at issue, her actual residence has no bearing on whether she remains liable for the alleged debt.

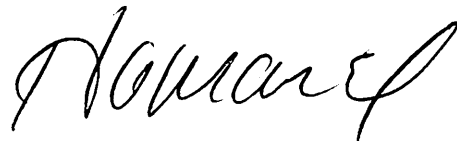
Finally, Petitioner states that she is willing to make monthly payments in an amount that she feels is more affordable to her. (Pet'r's Doc. Evid.) This Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with counsel for the Secretary or Michael DeMarco, Director of the HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121HUD. His telephone number is 1-800-669-5152, extension 2859.

### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment issued on November 21, 2013, 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 fifteen (15) percent of Petitioner's disposable income.

**SO ORDERED.**



H. Alexander Manuel  
Administrative Judge