

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

In the Matter of:

Joe Stubblefield,

Petitioner.

Case No. 14-VH-0044-AG-017

Claim No. 721004055OA

September 4, 2014

DECISION AND ORDER

On January 22, 2014, Joe Stubblefield (“Petitioner”) filed a *Hearing Request*, along with documentary evidence, concerning a proposed administrative wage garnishment for a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “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 U.S. Government.

Applicable Law

The Secretary has designated the administrative judges of this Court to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. *See* 24 C.F.R. § 17.81(b). 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. Pursuant to 31 C.F.R. § 285.11(f) (8) (i), the Secretary has the initial burden of proof to show the existence and amount of the debt. Thereafter, Petitioner must present by a preponderance of the evidence that no debt exists, the amount of the debt is incorrect. 31 C.F.R. § 285.11(f) (8) (ii). Petitioner may also 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

Petitioner filed a *Hearing Request* and relevant documentary evidence on January 22, 2014. Pursuant to 31 C.F.R. § 285.11(f) (4), 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*”), dated January 22, 2014. On February 21, 2014, the Secretary filed his *Secretary’s Statement* along with documentation in support of his position. This case is now ripe for review.

Background

On or about February 3, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$10,597.14. *Secretary's Statement* ("*Sec'y Stat.*"). ¶ 2, filed February 21, 2014; Ex. 1, Note. The Note secured a subordinate mortgage held by the Secretary. *Sec'y Stat.*, ¶ 2. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender to bring Petitioner's primary mortgage current. *Sec'y Stat.*, ¶ 3. In exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y Stat.*, ¶ 3, Ex. 2, Declaration of Brian Dillon, Director of the Asset Recovery Division, HUD's Financial Operations Center.

On or about July 8, 2003, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated the mortgage was paid in full. *Sec'y Stat.*, ¶ 4. "By the terms of the Note and upon such occurrence, payment of Petitioner's subordinate mortgage and Note became due and owing." *Sec'y Stat.*, ¶ 4, Ex. 1, 2.

HUD has attempted to collect on the amount due under the Note but Petitioner remains indebted to the Secretary. *Sec'y Stat.*, ¶ 5. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$10,597.14 as the unpaid principal balance as of December 31, 2013;
- (b) \$2,869.75 as the unpaid interest on the principal balance at 4% annum through December 31, 2013;
- (c) \$2,778.12 as the unpaid penalties and administrative costs; and,
- (d) interest on said principal balance from November 21, 2013 at 4% per annum until paid.

Sec'y Stat., ¶ 6, Ex. 2, *Dillon Decl.*, ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated November 20, 2013, was sent to Petitioner. *Sec'y Stat.*, ¶ 7, Ex. 2, *Dillon Decl.*, ¶ 5. In accordance with 31 C.F.R. § 285.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD, but did not elect to do so, as of November 20, 2013.

Based on a review of Petitioner's bi-weekly pay statement for the period ending December 14, 2013, the Secretary, after accounting for allowable deductions, proposes a bi-weekly repayment schedule of \$153.12 or 15% of Petitioner's disposable pay. *Sec'y Stat.*, ¶ 12; *Dillon Decl.*, ¶ 8.

Discussion

Petitioner does not dispute the existence of the alleged debt. Rather, Petitioner claims that the terms of the proposed repayment schedule would create a financial hardship for him. Petitioner states, "[t]o be able to keep our current mortgage and bills paid[,], any extra would cause hardship. We are still trying to catch up on present bills, all due to medical hardship." *Hearing Request*, p.1. Petitioner presents as evidence a copy of his 2012 federal tax return,

copies of the 2012 wage and earning statements (W-2s) and pay statements for him and his wife, and copies of proofs of payment for various other bills Petitioner identified as household expenses.

Petitioner's pay statements from December 2013 to January 2014 reflected gross earnings of \$2,907.95 per month. *Hearing Request*, Attachments. After subtracting health insurance, and taxes, Petitioner is left with a monthly disposable income of \$2,165.93. Petitioner also identified monthly household expenses: mortgage, \$1,520; car loan, \$552.67; property tax assessments, \$225.56; and a monthly installment tax repayment plan with the U.S. Department of Treasury, \$100. *Hearing Request*, Attachments. Petitioner's alleged expenses totaled \$2,398.23.

In addition, Petitioner provided other miscellaneous expenses that included: a bill from a Sallie Mae student loan for \$48.77; a delinquent electric bill totaling \$453.95, a cell phone bill for \$279.99, an insurance bill for \$290.77, and two other unidentifiable bills for \$201.40 and \$214.24, respectively. *Hearing Request*, Attachments. The proofs of payment provided by Petitioner reflected outstanding balances for each of the listed expenses. There was no proof that these expenses recurred on a monthly basis. As such, the Court determined that these bill payments should not be credited towards Petitioner's monthly household expenses.

The Secretary claims, however, that the alleged debt is past-due and legally enforceable. According to the Secretary, "Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it." *Sec'y Stat.* ¶5, ¶11. As support, the Secretary produced a copy of the Note in which Petitioner agreed to pay the debt that is the subject of this proceeding. *Sec'y Stat.*, Ex. 1. The Secretary also submitted a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiated the debt amount alleged to be owed by Petitioner. *Sec'y Stat.*, Ex. 2, *Dillon Decl.*, ¶5. There is no point of contention regarding this issue. Petitioner does not disagree that the alleged debt as claimed by the Secretary is past due and legally enforceable.

But, with respect to Petitioner's financial hardship claim, the Secretary states that "while financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it," this Court "has the discretion to mitigate or adjust the amount of the monthly repayments upon a showing of extreme financial hardship." *Sec'y Stat.*, ¶11. Relying on Augustus C. Frazier, HUDALJ 86-05-OA, (April 11, 1986), and Richard Johnican, 09-H-CH-AWG07, (February 9, 2009), the Secretary concludes, in general, that Petitioner has not submitted "particularized" evidence in this case that substantiates his claim of extreme financial hardship. *Id.*; The Court finds the Secretary's argument to be both compelling and persuasive.

Upon further examination of the record, and a review of the cases cited by the Secretary, the Petitioner has failed to present, with particularity, evidence of extreme financial hardship. In fact the record shows that Petitioner's spouse earns a monthly net income of \$1,632.77, after deductions for tax and insurance. Their combined income increases Petitioner's monthly disposable income. Had Petitioner's disposable income been the primary source of income, Petitioner's monthly expenses would have exceeded his monthly disposable income by \$232.30. But, with the combined monthly disposable income from Petitioner and his spouse, Petitioner's

claim of financial hardship would be difficult to uphold because the income of the household would far exceed the sum total of his monthly household expenses.

Moreover, the Johnican decision provides further support that particularized evidence should be produced to substantiate expenses claimed. This Court determined in Johnican that certain expenses should only be credited towards Petitioner's "basic subsidies for living expenses" and submission of "documentary evidence to specifically substantiate said expenses" should be required. See also Manuel J. Simental, HUDOA No. 08-H-CH-AWG53 (November 26, 2008) (citing Brenda Husband, HUDOA No. 07-L-CH-AWG31 (February 14, 2008)). Such occurred in this case. Petitioner submitted certain expenses without any documentary evidence to establish whether they were recurring expenses. As a result those expenses could not be considered as evidence of financial hardship. Based on the evidence presented, the Court finds that Petitioner's claim of financial hardship fails due to lack of sufficient and credible evidence.

The Secretary proposes a garnishment of 15% of Petitioner's disposable income, which is "that part of the debtor's compensation ... from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as Social Security taxes and withholding taxes...." 31 C.F.R. § 285.11(c). The garnishment would therefore equal \$324.89. After deduction of the proposed garnishment amount, Petitioner would have a remaining balance of \$1,307.88 per month to cover other miscellaneous expenses he has identified as necessary expenses.

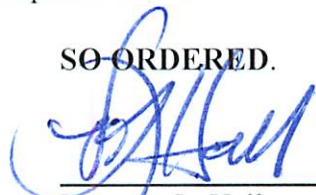
While the Court acknowledges Petitioner's financial circumstances, the Court is obligated to rely solely on the evidence presented by the parties and, thereafter, render a decision based upon the record. Based on the evidence presented in this case, the Court finds that the proposed garnishment amount does not constitute a financial hardship for Petitioner.

Order

Based on the foregoing, the *Order* imposing the Stay of Referral of this debt 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 \$153.12, or in an amount equal to 15% of Petitioner's disposable income.

~~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.