

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

In the Matter of:

LESLIE H. WILSON,

Petitioner.

HUDOHA 14-VH-0116-AG-049
78-0754138-0B

March 25, 2015

DECISION AND ORDER

On July 22, 2014, 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 22, 2014, the Court stayed referral of the debt to the U.S. Department of the Treasury until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”). On August 1, 2014, the Secretary filed his *Statement* along with documentation in support of his position. On September 11, 2014, Petitioner filed documentary evidence in support of his position. This case is now ripe for review.

Background

On March 3, 2008, Petitioner executed and delivered a Promissory Note FHA Title I (“Note”) to United Bank in the amount of \$14,908.70. (*Secretary’s Statement* (“*Sec’y. Stat.*”) ¶ 2, filed August 1, 2014; Ex. A, Note.) The Note was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). (*Sec’y. Stat.*, ¶ 2.) Petitioner did not make payment on the Note as agreed. (*Sec’y. Stat.*, ¶ 3.) As a result, on March 14, 2013, the Note was assigned to the HUD Secretary on behalf of the United States of America. (*Sec’y. Stat.*, ¶ 3; Ex. B, Assignment.)

HUD’s attempts to collect the alleged debt from Petitioner have been unsuccessful. (*Sec’y. Stat.*, ¶ 4; Ex. C, Declaration of Kathleen Porter (“*Porter Decl.*”),¹ ¶ 6.) The Secretary contends that Petitioner remains indebted to the Secretary in the following amounts:

- (a) \$8,070.87 as the unpaid principal balance as of July 30, 2014;
- (b) \$6.72 as the unpaid interest on the principal balance at 1% per annum through July 30, 2014; and
- (c) Interest on the principal balance from July 31, 2014 at 1% per annum until paid

(*Sec’y. Stat.*, ¶ 4; *Porter Decl.*, ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated April 16, 2014, was mailed to Petitioner. (*Sec’y. Stat.*, ¶ 5; *Porter Decl.*, ¶ 5.) Petitioner was offered the opportunity to enter into a repayment agreement for \$200 per month but refused. (*Sec’y. Stat.*, ¶ 6.) On June 5, 2014, HUD issued a Wage Garnishment Order to Petitioner’s employer. (*Sec’y. Stat.*, ¶ 7.) To date, Petitioner’s pay has been garnished three times, for a total of \$300. (*Sec’y. Stat.*, ¶ 8; *Porter Decl.*, ¶ 8.) The Wage Garnishment Order is currently stayed pending the issuance of this written decision. (*Notice of Docketing*, p. 2). The Secretary has proposed a repayment schedule of \$183.26 bi-weekly, or 15% of Petitioner’s disposable pay. (*Sec’y. Stat.*, ¶ 9; *Porter Decl.*, ¶ 9.)

Discussion

Petitioner does not dispute the existence of the debt or the amount. Rather, he claims that the proposed garnishment amount will cause severe financial hardship. (*Petitioner’s Hearing Request* (“*Pet’r’s Hr’g. Req.*”), filed July 22, 2014; *Pet’r’s Doc. Evid.*) More specifically Petitioner states, “I cannot afford \$300.00 per month. My expenses include a daughter’s tuition, room, board, and books.” *Pet’r’s Hr’g. Req.*

In order to show financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” *Ray J. Jones*, HUDAJF 84-1-OA at 2 (March 27, 1985). As support for his claim of financial hardship, Petitioner has provided a Debt Resolution Program Financial Statement, two pay statements, his 2013 federal

¹ Kathleen Porter is the Acting Director of the Asset Recovery Division in HUD’s Financial Operations Center.

tax return, and an expense sheet outlining his daughter's college fees and expenses. (*Pet'r's Hr'g. Req.; Petitioner's Documentary Evidence* ("Pet'r's Doc. Evid."), filed September 11, 2014.

Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). But, 24 C.F.R. § 285.11(k)(3) provides that if financial hardship is found this Court may downwardly adjust the garnishment amount to reflect the debtor's financial condition. When considering a claim of financial hardship, the Court reviews the Petitioner's disposable income, alleged monthly expenses, and supporting documentation.

Disposable income is defined as "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 Court also takes into account a petitioner's essential monthly living expenses when calculating the final monthly disposable income. 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).

Based on Petitioner's pay statements, he earns a gross monthly income of \$3,806.24. His monthly deductions of: federal income tax, \$581.60; Social Security tax, \$233.52; retirement, \$152.24; state tax, \$115.64; local tax, \$113.00; Medicare, \$54.62; medical insurance, \$39.54; and additional local taxes, \$6.64, total \$1296.80. After deducting Petitioner's monthly deductions from his gross monthly income, his monthly disposable income is \$2509.44.

Petitioner claims the following monthly expenses: rent, \$600; food, \$300; telephone, \$254.82; gas, \$61.00; electricity, \$26.00; and "Other," \$914.52. The record does not sufficiently support all of the figures listed as expenses. In cases lacking sufficient documentation, this Court previously 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)). Consistent with Reed the Court has determined that the expenses for rent, utilities, phone, and food will be treated as essential household expenses and credited towards Petitioner's monthly expenses. However, the expense item listed as "Other" is ambiguous and, without further specification, the Court will not include the "Other" amount as an essential expense.

Petitioner also requested that the Court consider costs for his daughter's college tuition, room and board, and books among his essential monthly expenses. He introduced into evidence an expense sheet outlining his daughter's educational costs. Petitioner's evidence reflected the costs of the tuition expenses but failed to identify, with certainty, who pays the tuition expenses for his daughter and how much is paid on a monthly basis. Nevertheless, the Court has determined that tuition expenses will not be included in Petitioner's household expenses because such expenses are not considered essential.

Based on the figures provided, Petitioner's essential monthly expenses total \$1241.82. After deducting Petitioner's monthly expense total of \$1241.82 from his monthly disposable income of \$2509.44, Petitioner is left with a positive monthly balance of \$1267.62. It is evident that the remaining balance would not only support the proposed garnishment amount but it would also support any other expenses Petitioner might incur on a monthly basis. As a result, the Court finds that the proposed garnishment amount would not create a financial hardship.

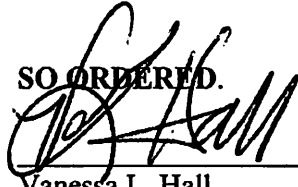
The Secretary seeks authorization of a repayment schedule to recover the subject debt at 15% of Petitioner's disposable income. As support, the Secretary produced a copy of the Note in which Petitioner promised that all amounts due under this Note shall become immediately due... "(2) if I breach any promise in this Note or in the Contract." *Sec'y. Stat.*, Ex. A, ADDITIONAL TERMS. Such has occurred in this case and therefore Petitioner should comply with the terms of the agreement. The Secretary also introduced into evidence a sworn declaration from the Acting Director of HUD's Asset Recovery Division in which the Director further substantiated that the subject debt was legally enforceable against Petitioner. *Sec'y. Stat.*, Ex. 2. As a result, the Secretary has met his initial burden of proof to show the existence and amount of the alleged debt, and that the alleged debt is owed by Petitioner. 31 C.F.R. § 285(f)(8)(i). Without sufficient evidence from Petitioner to refute or rebut the evidence presented by the Secretary, the Court is fully persuaded that Petitioner remains legally obligated to pay the debt in the amount claimed by the Secretary.

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**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 15% of Petitioner's disposable pay.

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.