

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

In the Matter of:

Misty Whitaker,

Petitioner.

HUDOHA 14-VH-0128-AG-050
Claim No. 7-80724412-0

April 17, 2015

RULING ON PETITIONER'S MOTION TO REOPEN AND ORDER

A *Decision and Order* (“*Initial Decision*”), dated March 22, 2012, was issued in the above-captioned case, which held that the Secretary is authorized to seek collection of Petitioner’s debt to the U.S. Department of Housing and Urban Development by means of administrative wage garnishment. On October 1, 2014, Petitioner filed a letter in which she stated, “I am not contesting that I owe the debt or that the debt is past due. I am requesting that the payment arrangement/wage garnishment be reduced as the proposed amount will cause undue financial hardship.” Petitioner’s letter is hereby deemed to be a *Motion to Reopen* (“*Motion*”).

31 C.F.R. § 285.11(k)(1) provides that a debtor “whose wages are subject to a wage withholding order...may, *at any time*, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship.” (emphasis added)

In the *Initial Decision*, this Court concluded, in relevant part:

Petitioner’s disposable pay, as proposed by the Secretary, would equal \$152.47 and leave [P]etitioner with a balance of \$68.85 per month to cover her remaining expenses. Therefore, I find the Petitioner has provided sufficient proof that the Secretary’s proposed garnishment at a rate of 15% of Petitioner’s disposable pay would create a financial hardship for Petitioner within the meaning of 31 C.F.R. § 285.11(f)(8)(ii). *Initial Decision*, p. 4.

The Court is permitted, in administrative wage garnishment cases, to consider evidence of hardship, and, as such, is permitted to do so in the instant case. See 31 C.F.R. § 285.11(f)(8)(ii); (k)(1), and (k)(2). Here, Petitioner unambiguously asserts a material change in her circumstances that has resulted in financial hardship. In Petitioner’s *Motion* she states:

As a trial, I agreed to make payments on this loan in the amount of \$250.00 as this was the least the representative would accept. As I explained at the time, this amount would pose a significant financial strain, and this has proven true.

In support of her claim, Petitioner introduced, as evidence, copies of her monthly expense record, monthly statements from her bank accounts, a bi-weekly pay statement, and proofs of payments for additional household expenses. See Motion, attachments.

In order to calculate Petitioner's adjusted disposable income, the Court must take into account Petitioner's essential monthly living expenses. 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).

Here, according to Petitioner's pay statements, she earns a bi-weekly gross income of \$2,807.93. Her monthly deductions include: federal income tax, \$241.52; FICA, 169.29; Medicare, \$39.59; city tax, \$110.49; Pennsylvania state tax, \$83.83; unemployment compensation tax, \$1.91; and non-taxed monthly deductions for pension contributions, at \$54.75; and flexible salary reductions, at \$88.07. Petitioner's disposable income, after deductions, is \$2,045.48, bi-weekly, or \$4,090.96 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). To prove her claim of financial hardship, Petitioner submitted documentary evidence for the following household expenses: mortgage, \$961.71; gas, \$60.25; water/sewage, \$83.23; and tuition costs for her child, \$471.50.¹ Other expenses Petitioner listed as proof, but without sufficient documentation, were the following: electricity, \$46.00; car insurance, \$60.00; food/household necessities, \$400.00; gasoline/transportation, \$276.00; laundry/dry cleaning, \$150.00. 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. Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). The listed expenses for electricity and car insurance would be considered the

¹ Petitioner stated in her *Hearing Request* that she had been informed by a HUD representative that "the tuition cost for my child is not a permissible expense." The representative is correct. Educational expenses, whether for a petitioner or a member of a petitioner's family, are generally not considered essential household expenses because such essential expenses routinely consist of subsistence costs such as food, medical care, housing, clothing or transportation." See Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985). However, the precedent set forth in the *Initial Decision* included tuition fees as an essential expense. See Misty Whitaker, HUDOA No. 12-M-NY-AWG13, at 3 (March 22, 2012). To maintain consistency in the calculation of monthly expenses in this particular case, tuition fees will likewise be included herein as an essential monthly expense.

services and products that would fall under this category. Consistent with Loera, the Court will include these essential household expenses as part of Petitioner's total household expenses.

Finally, Petitioner alleges undocumented expenses for the following: food/household goods, \$400.00 (for a household of one adult and one child); gasoline/transportation, \$175.00; and laundry, \$100.00. The Court finds that the alleged amount for food, while generally credible as an essential expense, is somewhat overstated without evidence to substantiate the amount as listed. Additionally, the alleged expenses for gasoline/transportation and laundry are both unsubstantiated, but were both claimed and included in the calculation of expenses in the *Initial Decision*. In order to maintain consistency with the Court's previous calculations in the *Initial Decision*, this Court will include the alleged expenses of \$400.00 for food/household goods, \$175.00 for gasoline/transportation,² and \$100.00 for laundry as additional monthly costs to be included in Petitioner's monthly household expenses.

Petitioner further claims an expense of \$165.00 per month for a bundled cable, internet, and telephone package. Telephone service is an essential household expense, but cable and internet services are not considered essential. Petitioner submitted a copy of a Verizon bill, but the Court is unable to determine from the bill whether the cost listed covers Petitioner's bundled package, or more specifically covers her cell phone service. As a result, Petitioner will be only credited \$55.00, or one-third of the bundled cost towards her total monthly expenses.

Petitioner next lists expenses for her child's dental care, \$149.00; pet insurance, \$28; emergency savings, \$100.00; and entertainment/miscellaneous, \$75.00. She has included as well copies of an installment payment plan to repay her outstanding parking tickets and credit card statements of past due balances. Only the child's dental care, at \$149.00, will be credited towards Petitioner's monthly household expenses as an essential expense. The Court will not credit past due balances on credit cards, outstanding parking tickets, and costs for entertainment, pet insurance, and emergency savings as essential expenses that are normal, recurring expenses. See Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985) (in which the Court held "In a case involving a claim of financial hardship, Petitioner "must submit 'particularized evidence,' including proofs of payment, showing that [s]he will be unable to pay *essential subsistence costs such as food, medical care, housing, clothing or transportation.*"). (emphasis added)

Based on the itemized costs submitted by Petitioner, along with supporting documentation, Petitioner's essential household expenses per month total \$2,561.69. Petitioner's monthly income of \$4,090.96, less total expenses of \$2,561.69, yields a positive balance of \$1,529.27 per month. A monthly garnishment of \$613.64 would decrease Petitioner's income to \$915.63, a monthly balance that does not support Petitioner's contention that the proposed garnishment would constitute a financial hardship for Petitioner.

² Because the evidence herein is insufficient as support for the additional costs for transportation now alleged, the Court will only credit the claim for transportation at the amount credited in the *Initial Decision*.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Court has the authority to order garnishment at a lesser rate based upon the record in cases where financial hardship is established. The Court finds that Petitioner has failed to meet her burden of proof that her circumstances have materially changed, or that imposition of the proposed garnishment amount would constitute a financial hardship for Petitioner.

Based on the examination of the record and a review of relevant case law and regulations, the Court finds that the debt that is the subject of this proceeding remains legally enforceable against Petitioner in the amount claimed by the Secretary, and that the proposed garnishment amount does not constitute a financial hardship for Petitioner. Therefore, Petitioner's *Motion to Reopen* is **DENIED**. 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 claimed by the Secretary. Petitioner's debt shall remain due and payable until this debt obligation, including all interest, penalties, and fees, is extinguished. It is further

ORDERED that the decision issued on March 22, 2012, in In re Misty Whitaker, HUDOA No. 12-M-NY-AWG13, **SHALL NOT BE MODIFIED** and shall remain **IN FULL FORCE AND EFFECT**.



Vanessa L. Hall
Administrative Judge