

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

In the Matter of:

MICHELLE LOWRIE-JACKSON

Petitioner.

15-AM-0005-AG-002

780706252

October 17, 2016

DECISION AND ORDER

On October 9, 2014, Michelle Lowrie-Jackson (“Petitioner”) filed a *Hearing Request* concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the 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 allegedly owed to the United States government.

The Secretary of HUD 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. On October 14, 2014, the Court issued a Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”) that stayed the issuance of a wage garnishment order until the issuance of this *Decision and Order*. See 31 C.F.R. § 285.11(f)(4).

Background

On or about February 21, 2003, Petitioner executed and delivered a Retail Installment Contract-Security Agreement (“Note”) to her lender, Palm Harbor Homes in the amount of \$35,398.04 in order to pay for a manufactured home purchased by Petitioner. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed October 23, 2014; Exhibit A; Declaration of Brian Dillon¹ (“Dillon Decl.”), ¶ 3.) The Note was contemporaneously assigned from Palm Harbor Homes to 21st Mortgage Corporation and insured against nonpayment by the U.S. Department of Housing and Urban Development. (Dillon Decl., ¶ 4; Sec’y Stat. ¶2.)

On or about September 15, 2008, Petitioner failed to make payment in accordance with the Note and 21st Mortgage Corporation assigned the Note to HUD. (Sec’y Stat., Exhibit B.)

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD’s Financial Operations Center.

Despite demands for payment by HUD, Petitioner has failed to make payment and remains in default on the Note. (Sec'y Stat. ¶5.)

The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,444.10 as the unpaid principal balance as of October 7, 2014;
- (b) \$0.00 as the unpaid interest on the principal balance at 3% per annum through October 7, 2014;
- (c) \$0.00 as the unpaid penalties and administrative costs as of October 7, 2014; and
- (d) interest on said principal balance from October 8, 2014, at 3% per annum until paid.

(Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4.)

On November 4, 2010, in accordance with 31 C.F.R. § 285.11(e), HUD sent Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"). (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 under mutually agreeable terms. Petitioner did not enter into a repayment agreement or pay the debt in full based on the November 4, 2010 Notice of Intent. (Dillon Decl., ¶ 7). As such, the Secretary proposes a bi-weekly repayment schedule of \$69.68 per month, or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.)

Discussion

The Secretary bears the initial burden to prove the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must demonstrate 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). Petitioner may also present evidence that the terms of the proposed repayment schedule are unlawful, would cause financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

As evidence of Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note signed by Petitioner, the sworn declaration of the Director of HUD's Asset Recovery Division, and a copy of the Note. (Sec'y Stat., Ex. A, Ex. B.) Accordingly, the Court finds the Secretary has met his initial burden.

In response, Petitioner states that the debt is improperly calculated. Specifically, Petitioner states that:

The amount listed on the garnishment continues to change [sic] regardless of what is paid. Have paid 12,563.27 and HUD states I owe more than the difference I am [ex]pecting nobody can explain where extra money has gone [sic]. HUD says I still owe over 4000. They will not say where it comes from.

(Pet'r Hr'g Req., p. 1.) As support, Petitioner attaches a computer print-out listing her payments. However, the print-out reflects \$12,565.27 in payments by Petitioner toward an initial indebtedness of \$35,398.04, plus penalties and interest. (Id.) Petitioner also filed additional documentary evidence in this case on January 21, 2015 (Pet'r Doc. Evid.). However, nowhere has Petitioner filed evidence to prove that the Government's mathematical calculations are incorrect or that Petitioner's debt to HUD is unenforceable. Accordingly, I find that the amounts claimed by the Secretary are properly calculated.

Petitioner also suggests that there is a title discrepancy on her foreclosed property, leaving her liable for continuing tax payments on the property. (Id.). However, this issue is irrelevant as to the matter of repayment of Petitioner's loan. This Court is not empowered to conduct an investigation of this allegation on behalf of Petitioner or any other party, public or private. In this matter, the Court is only authorized to determine, after a review of documentary evidence, whether the debt at issue is past- due and legally enforceable against Petitioner. 24 C.F.R. § 17.152. As such, this aspect of Petitioner's claim is outside the scope of this proceeding.

Petitioner also alleges that the proposed garnishment amount will create a financial hardship. While financial hardship does not invalidate a debt or release a debtor from the legal obligation to repay it, Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986), financial hardship is relevant to the amount of the administrative wage garnishment that will be allowed. 31 C.F.R. §§ 285.11(f)(2) and (f)(10)(iii). In order to show financial hardship, Petitioner must submit documentary evidence in support of her hardship claim. Percy Cates, HUDOHA No. 14-VH-0048-AG-019 (October 30, 2014). Such evidence should include pay statements and copies of bills and receipts for essential household expenses. However, despite multiple opportunities to provide this Court with evidence of her financial hardship, the documentary evidence Petitioner provides to support this claim is scant, at best.

Petitioner did not submit a pay statement in support of her financial hardship claim. However, the Secretary produced a copy that was previously provided to him by Petitioner. Based on this pay statement, Petitioner receives a bi- weekly gross pay of \$1,220.38, or \$2,440.76 monthly. This amount, less allowable deductions of Federal Taxes, FICA Taxes, Medicare Taxes, and Health Insurance would leave Petitioner with a bi- weekly disposable income of \$918.66, or a monthly disposable income of \$1,837.32.² See 31 C.F.R. § 285.11(c). (Petitioner's disposable pay for purposes of administrative wage garnishment is defined as that part of her compensation remaining after the deduction of health insurance premiums and any amounts required by law to be withheld, which include social security taxes and withholding taxes, but not any amount withheld pursuant to court order.).

Petitioner did provide certain some bills detailing certain expenses. These bills include car insurance, rent, phone bill, power bill, credit card statement and cable television bill. (Pet'r's

² There is a discrepancy between the Secretary's proposed amount of \$69.68 and 15% of Petitioner's disposable income. In HUD's calculations, HUD used Petitioner's net pay after deductions, \$766.29, then deducted taxes and insurance, leaving \$464.57 in disposable pay, 15% of which is \$69.68. HUD should have actually used Petitioner's gross pay as a starting point which was \$1220.38. After allowable deductions, Petitioner's disposable income would be \$918.66, 15% of which would be \$137.80.

Doc. Evid.). Although Petitioner provided evidence of certain expenses, not all of these bills are recognized when determining financial hardship.

The Court only considers recurring essential household expenses in the calculus of determining whether a wage garnishment in the amount proposed by the Secretary would cause financial hardship. Elizabeth Godfrey, HUDOA No. 12-M-CH-AWG45 (June 14, 2012) citing Charles R. Chumley, HUDOA No. 09-M-CH-AWG09 (April 6, 2009). Of the expenses proffered by Petitioner, only her car insurance (\$139.01) and rent (\$730.00) are supported by documentary evidence.

Petitioner also claims certain medical expenses to include medications and recurring doctor's appointments. However, these expenses are not substantiated by any documentary evidence. This Court has held that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOHA No. 09-M-CH-A WG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Accordingly, the Court cannot credit such expenses to Petitioner's financial hardship claim.

Other documents that cannot be taken into consideration are the phone bill and power bill. The power and phone bills are in the name of Richard E. Jackson. Without evidence that Petitioner is responsible for these expenses, the Court cannot include such expenses in calculating whether garnishment of Petitioner's wages would cause financial hardship. Moreover, even if these expenses were attributed to Petitioner, the addition of these two expenses would still be insufficient to demonstrate financial hardship.

Petitioner also supplied a copy of her credit card statement showing a balance of \$1,684.45. This Court has consistently held that a credit card statement that is not broken down by expense cannot be considered in its totality, as it may include expenses that are outside the scope of essential household expenses. Gary Cannady, HUDOA No. 08-M-CH-AWG26 (June 12, 2009). Therefore, because her bill is not itemized, Petitioner's credit card statement cannot be taken into account because it is impossible to tell what portion of the bill represents essential household expenses.

Last, Petitioner's cable television bill cannot be taken into account. The Court generally does not include cable television as an essential household expense for the purposes of a financial hardship analysis. Howard G. Casey, HUDBCA No. 03-C-CH-AWG08 (December 27, 2002).

Subtracting the essential expenses from Petitioner's disposable income would leave her with \$968.31 monthly. If HUD were to garnish 15% or \$137.80 of Petitioner's disposable income, Petitioner would be left with \$830.51 monthly. Petitioner has, therefore, not demonstrated that a garnishment in the amount proposed by the Secretary would create a financial hardship.

ORDER

After a review of the record in this proceeding, I find that the debt at issue is past-due and enforceable against Petitioner in the amounts claimed by the Secretary. Furthermore, based upon the financial documentation submitted in this case, I find that a wage garnishment of 15% of Petitioner's disposable pay would not cause a financial hardship to Petitioner. It is

ORDERED that the *Order* imposing the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is

FURTHER ORDERED that the Secretary is authorized to seek collection of this outstanding obligation at a rate of 15 percent of Petitioner's disposable income by means of administrative wage garnishment.

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'H. Alexander Manuel', is written over a horizontal line.

H. Alexander Manuel
Administrative Judge