

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

In the Matter of:

ROMANA L. PERRY,

Petitioner.

16-AM-0061-AG-021

Claim No. 5528282 LL 9244

June 8, 2017

DECISION AND ORDER

On March 24, 2016, Romana L. Perry (“Petitioner”) filed a *Hearing Request* along with limited documentary evidence concerning a proposed 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. 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 alleged debt. Thereafter, Petitioner must present 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 the 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

On March 24, 2016, Petitioner filed her *Hearing Request*. Pursuant to 31 C.F.R. § 285.11(f)(4), this Court ordered the suspension of any withholding order that has been issued to Petitioner’s employer beginning on the 61st day after receipt of the hearing request and continuing until the issuance of a written decision by this Court. *Notice of Docketing, Order, and Stay of Referral* (“Notice of Docketing”), at 2, dated March, 28, 2016. The Notice of

Docketing also included an order to the Secretary and Petitioner to file their documentary evidence by April 28, 2016, and May 12, 2016, respectively.

On April 28, 2016, the Secretary filed his *Statement* along with documentary evidence in support of her position. As of December 13, 2016, Petitioner's response to the Notice of Docketing remained overdue. The Court entered an *Order for Documentary Evidence* ordering Petitioner to file documentary evidence on or before January 9, 2017. On January 5, 2017, this Court received documentary evidence from Petitioner.

Background

On February 21, 1993, Petitioner executed and delivered a Retail Installment Contract ("Note") to NC Mobile Home Corp. dba Life Styles in the amount of \$29,890.00, which was insured against nonpayment by the Secretary. *Secretary's Statement* ("Sec'y Stat."), ¶ 2. That same day, the note was contemporaneously assigned to Logan-Laws Financial Corporation ("Logan Laws"). *Sec'y Stat.*, ¶ 3. Logan Laws was defaulted as a securer of mortgage backed securities ("MBS") due to its failure to comply with the Government National Mortgage Association's ("GNMA") MBS program requirements. *Sec. Stat.*, ¶ 4, *Declaration of Leslie Meaux Pordzik* ("Leslie Decl."), ¶ 4. Upon default by Logan Laws, all of its rights, title, and interest in Petitioner's loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan Laws and GNMA. *Sec. Stat.*, ¶ 5, *Leslie Decl.*, ¶ 4. As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Sec'y Stat.*, ¶ 6, *Leslie Decl.*, ¶ 5.

Petitioner is currently in default on the Note. The Secretary has made attempts to collect from the Petitioner, but has been unsuccessful. Petitioner is indebted to the Secretary in the following:

- a) \$21,967.90 as the unpaid principal balance as of April 27, 2016;
- b) \$30,273.30 as the unpaid interest on the principal balance at through April 27, 2016;

- c) \$3,871.17 as the unpaid penalties as of April 27, 2016; and
- d) interest on said principal balance from April 28, 2016 until paid.

Sec'y Stat., ¶ 7; *Leslie Decl.*, ¶ 6.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated February 18, 2016 was sent to Petitioner. *Sec'y Stat.*, ¶ 8; *Leslie Decl.*, ¶ 7. The Notice stated that Petitioner had the opportunity to enter in to a written repayment agreement pursuant to 31 C.F.R. § 285.11(e)(2)(ii). Petitioner did not enter into a repayment agreement in response to the notice. *Sec'y Stat.*, ¶ 9; *Leslie Decl.*, ¶ 7 & 8.

Discussion

Based on a December 31, 2016 correspondence filed with this Court as documentary evidence, Petitioner does not dispute that the subject debt is past due and legally enforceable.

Petitioner is instead asserting that the proposed repayment terms of the administrative wage garnishment would cause her financial hardship.

Generally, this Court has discretion to decrease the percentage garnished from a Petitioner's monthly income from 15% to a lower increment, or determine that the garnishment is currently unenforceable, if Petitioner can demonstrate through documentary evidence that her monthly disposable income would be insufficient to sustain her after payment of necessary household expenses and the proposed garnishment repayment amount. The Petitioner has the burden to provide this documentary evidence in order to substantiate any claim of financial hardship. 31 C.F.R. §285.11(f)(8)(ii).

Based on the evidence provided to the Court, Petitioner has not met this burden. Petitioner's net monthly income is calculated by taking the sum of Petitioner's gross income less taxes and deductions. Petitioner has two sources of monthly income: (1) \$600 a week from her full-time employer Apex Tool Group before taxes and deductions; and (2) an average of \$116.96 a week from her part-time employer Howell's Motor Freight, Inc. before taxes and deductions. This calculation is based on a 10.17 hour work week, or the average amount of hours Petitioner works for this employer in a week based on the two pay stubs Petitioner provided to the Court. The average amount of hours is multiplied by the \$11.50 hourly rate indicated on the pay stubs Petitioner provided for a total of \$116.96.

Accordingly, the sum of Petitioner's gross monthly income is \$2,867.82. After taxes and deductions are applied, based on the amounts indicated in the paystubs Petitioner provided to the Court, her net monthly income totals \$2,387.18.

Further, Petitioner has provided sufficient documentary evidence for the Court to consider the following monthly necessary expenditures: \$900 for rent; \$190 for utilities; \$35 for renter's insurance; \$118 for car insurance; and \$54 for a cell phone plan. The Court has allocated \$200 in monthly food expenses to the total amount of necessary monthly expenses because Petitioner did not provide documentary evidence indicating her monthly food costs. The sum of these monthly expenditures totals \$1,497 per month. This amount deducted from Petitioner's net monthly income of \$2,387.18 equals \$890.18, or her monthly disposable income. Accordingly, Petitioner has not demonstrated through documentary evidence that a 15% administrative wage garnishment would cause her financial hardship such that this Court should mitigate the amount garnished or stay garnishment altogether.

This finding does not prevent Petitioner from filing supplementary documentary evidence with the Court pursuant to 31 C.F.R. §285.11(k)(2) so that her financial hardship determination can be reevaluated. Petitioner is also free to seek *pro bono* legal services that may be locally available to her regarding her consumer debts.

ORDER

Based on the foregoing, this Court finds Petitioner's debt past due and legally enforceable. It is hereby

ORDERED that 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. It is

FURTHER ORDERED that the Stay of Referral previously entered in this case is hereby

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