

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

In the Matter of:

Ashley J. Windsor,

Petitioner.

19-VH-0037-AG-009

780751894

January 3, 2020

RULING ON MOTION TO REOPEN AND ORDER

NOW COMES before the Court a request for hearing that the Court deems to be a *Motion to Reopen* the previous *Decision and Order* issued on September 4, 2018 in which the Court held that the Secretary was authorized to seek collection of Petitioner's debt to the U.S. Department of Housing and Urban Development by means of administrative wage garnishment to the extent authorized by law. For good cause shown, Petitioner's *Motion to Reopen* is **GRANTED**.

In the previous *Decision and Order*, the Court stated, in relevant part:

Petitioner does not dispute the existence of the debt owed to the Secretary, rather Petitioner disputes the amount owed. (*See Petitioner's Hearing Request ("Pet'r's Hr'g Req.")*, dated September 7, 2017). Petitioner acknowledges that she "had a loan placed with HUD around August 2013," but alleges that when she switched banks, she was unable to reach South Central Bank, N.A. or HUD, to inform them of the change. *Id.* In support of her position, Petitioner attached her bank statements showing payments to HUD beginning August 12, 2013 and ending April 12, 2016, for a total of \$6,525.00. *Id.*

...

The Court concluded that:

This Petitioner's payments up to and including April 2016 appear to be calculated in the Secretary's Statement. (*See Sec'y Stat.*, ¶ 5; *Dillon Decl.*, ¶ 4). Petitioner has not brought forth any additional evidence to show that she made payments to HUD after April 2016 or otherwise owes less than the Secretary's claimed amount. (*See Pet'r's Hr'g Req.*). This Court has consistently maintained that "[a]ssertions

without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or enforceable." (See Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

Petitioner previously admitted and continues to maintain that she owes the amount claimed by the Secretary. However, Petitioner now claims that the current proposed garnishment amount would cause financial hardship. As support, Petitioner submitted, along with her *Motion to Reopen*, additional evidence that included copies of her most recent pay statements from January 2019 through March 2019; her checking account statements with Navy Federal Credit Union and Northwest Federal Credit Union; proofs of recent expenses for household utilities and monthly mortgage payments, and a completed Consumer Financial Debtor's Form along with a copy of her Individual Income Tax Return for 2018.

The Secretary noted that "On September 4, 2018, a decision finding Petitioner's debt to HUD legally enforceable and authorizing wage garnishment was issued by the Court in a previous Administrative Wage Garnishment proceeding. (OHA No. 17-AM-0201-AG-077 - Exhibit D)." *Sec'y Stat.*"), filed February 12, 2019, ¶ 8)." But, if good cause is shown, the Court can find cause to reopen a case. 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).

Upon reviewing the additional evidence submitted by Petitioner, it is evident that Petitioner's income consistently fluctuates for each bi-weekly pay period based upon the number of overtime, and sometimes double-time hours invested. The Court averaged the total amount of Petitioner's monthly disposable pay from January through March 2019 and calculated her total monthly disposable pay to be \$4943.00. After deducting Petitioner's average monthly expense total of \$3830.00¹ from her monthly disposable pay of \$4943.00, Petitioner's remaining balance is \$1113.00.

The Secretary earlier disputed Petitioner's allegation of financial hardship as a matter not fully supported by the record of evidence. (*Secretary's Statement*, ("Sec'y Stat."), filed February 12, 2019, ¶ 6). But, based on the recent documentation submitted by Petitioner, the Secretary's proposed repayment schedule previously calculated by the Secretary at \$820.47 biweekly would yield a monthly garnishment amount of \$1640.94, an amount that apparently exceeds Petitioner's remaining monthly balance of \$1113.00. If the current proposed garnishment schedule were imposed, it would yield for Petitioner

¹ By Petitioner's own admission, the total amount of the credit cards listed (\$950.00 total) on Petitioner's financial form and bank statements were not in her name. As a result, the total amount of those credit cards was not included with the monthly expenses because such expenses were not deemed by the Court to be essential living expenses (i.e. food, shelter, clothing) in this case.

a negative balance of (-\$527.94) at the end of each month and would create a financial hardship for Petitioner at the current rate of 15%.

Pursuant to 31 C.F.R. § 285.11(k)(3), the Court has the authority to order garnishment at a lesser rate based upon a showing of sufficient evidence in support of a finding of financial hardship. The Court so finds a showing of financial hardship in this case, at least at the rate of 15%. The Court considered other proposed garnishment rate calculations at 12%, 10%, 8%, and 5% of Petitioner's monthly disposable income of \$4943.00 in order to assess which garnishment rate would make less severe the financial hardship on Petitioner without compromising efforts to collect on the debt owed by Petitioner in this case.

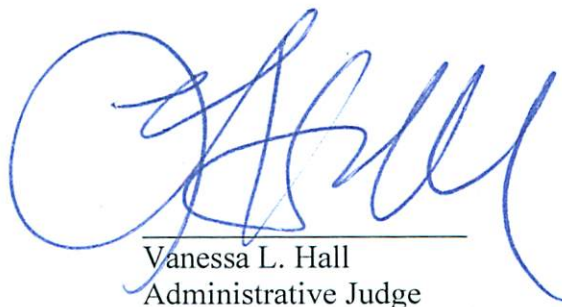
The Court found in this case that sufficient evidence supports reducing the current 15% garnishment rate to a lesser rate of 8% in order to collect on the subject debt as authorized pursuant to 31 C.F.R. § 285.11(k)(3).

ORDER

Based on the foregoing, the wage garnishment order authorized by the *Decision and Order* in Ashley J. Windsor, HUDOA No. 17-AM-0201-AG-077 (September 4, 2018), is hereby **MODIFIED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of their outstanding obligation in the amount of \$19,650.29 plus interest by means of administrative wage garnishment in the amount of eight (8) percent of Petitioner's disposable income, without prejudice to the Secretary's right to seek recovery of the debt by means of administrative wage garnishment in a greater amount if, in the future, Petitioner's disposable income increases or Petitioner's monthly expenses decrease.

SO ORDERED.



Vanessa L. Hall
Administrative Judge