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In the Matter of:

**Kim M. Jones,**

Petitioner

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HUDBCA No. 04-D-NY-AWG40

Claim No. 780440753

Kim M. Jones  
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Philadelphia, PA 19119

Pro se

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For the Secretary

### **DECISION AND ORDER**

Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes Federal agencies to utilize administrative wage garnishment as a remedy for the collection of debts owed to the United States Government.

The administrative judges of this Board have been designated to determine whether the Secretary may collect the alleged debt by administrative wage garnishment if contested by a debtor. 24 C.F.R. § 17.170(b). This hearing was conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. 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). Petitioner thereafter must present by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful,

would cause a financial hardship to the Petitioner, or that collection of the debt may not be pursued due to operation of law, 31 C.F.R. § 285.11 (f)(8)(ii). Pursuant to 31 C.F.R. § 285.11 (f)(10)(i), issuance of a wage withholding order was stayed by this Board until the issuance of this written decision.

### **Summary of Facts and Discussion**

On October 2, 1998, Petitioner executed and delivered to PNC Bank, NA a note in the amount of \$17,193.60 for home improvement that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703 (g). (Secretary's Statement, hereinafter, "Secy. Stat.," ¶ 1). Petitioner failed to make payments as agreed in the note. PNC Bank, NA assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54 (2003). (Secy. Stat., Exh. B). The Secretary is the holder of the note on behalf of the United States. (Secy. Stat., ¶ 3).

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts: \$9,336.99 as the unpaid principal balance as of July 30, 2004; \$140.04 as the unpaid interest on the principal balance at 3.0% per annum through July 30, 2004; and interest on said principal balance from August 1, 2004 at 3.0% per annum until paid. (Secy. Stat., Exh. C, Declaration of Brian Dillon, hereinafter, "Dillon Decl.," ¶ 4). Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner disputes the terms of the proposed repayment schedule and asserts that administrative wage garnishment would cause adverse financial hardship. (Petitioner's Hearing Request dated August 20, 2004, hereinafter "Pet. Hrg. Req.").

Petitioner alleges that she "would have responded to the wage garnishment notification prior to the hearing . . . had she received it in time." (Petitioner's letter dated October 11, 2004). In support of this contention, Petitioner states that "[d]uring the month of May and June 2004, [she] . . . had to leave [her] . . . home for court ordered lead paint removal . . . [and that during that time her] mail was held in the local post office . . . ." *Id.* Petitioner claims that she did not receive the NOI until after the hearing date had expired. *Id.* Petitioner, however, has failed to submit any documentary evidence in support of her assertion. Assertions without supporting evidence are insufficient to show that the debt claimed by the Secretary is not past-due or enforceable. Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Evidence in the record reveals that the United States Department of Treasury ("Treasury") sent Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment ("NOI") dated May 18, 2004. (Dillon Decl., ¶ 5). The NOI stated that "If you pay your debt in full or enter into a written repayment plan acceptable to the Federal Agency before June 20, 2004, a garnishment order will not be issued to your employer." (Dillon Decl., ¶ 5). Petitioner's hearing request form is dated August 20, 2004. (Pet. Hrg. Req.). Petitioner has failed to submit evidence that would prevent a garnishment order from being issued to her employer after June 20, 2004. Therefore, in the absence of a timely request for hearing, I find that the Treasury properly issued an administrative wage garnishment order on June 25, 2004.

Petitioner alleges that administrative wage garnishment has already started. (Pet. Letter dated August 20, 2004). It is well-established that a garnishment under this program may be up to an amount not to exceed fifteen (15) percent of the debtor's disposable pay. Evidence in the record reveals that based upon the issuance of a Wage Garnishment Order, Treasury received payments of \$210.65 and \$210.66 on August 5, 2004 and August 11, 2004, respectively. (Dillon Decl., ¶ 9). The garnishment amount was calculated by Petitioner's employer based on the Wage Garnishment Order for a garnishment of 15% of Petitioner's net disposable pay per pay period. (Dillon Decl., Exh. A). Dillon states in his Declaration that these payments have not yet been received by HUD and therefore are not reflected in Petitioner's outstanding balance allegedly owed to the Secretary. (Dillon Decl., ¶ 8).

Petitioner claims that "the current wage garnishment in the amount of \$210.00 biweekly [sic] causes . . . [her] financial hardship." (Pet. Letter dated October 11, 2004). Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship to the Petitioner. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner attached to her letter dated October 11, 2004 copies of various bills, and a pay stub from her employer, Independence Blue Cross, for the pay period of September 19, 2004 through October 2, 2004. Petitioner's gross earnings for those two weeks totaled \$ 1,741.54. After making deductions for federal income tax withholding, state tax withholding, FICA, Medicare, and health insurance, Petitioner's disposable pay equals \$1,400.72 bi-weekly or \$2,801.44 monthly. (Pet. Letter dated October 11, 2004, unmarked Exh.). Fifteen percent of \$1,400.72 is \$210.10 bi-weekly. Therefore \$210.10 bi-weekly should have been garnished from Petitioner's pay, not \$210.65 or \$210.66 as proposed by the Secretary. (Secretary Response to Order dated October 7, 2004). However, the Board finds that this instance of improper calculation of the amount to be withheld from Petitioner's disposable pay by Petitioner's employer is inconsequential and that Petitioner is not entitled to any reimbursement for the nominal amount overwithheld.

Petitioner has provided credible evidence substantiating her monthly bills and expenses which are substantial with respect to her disposable income. Petitioner has provided credible evidence substantiating her monthly bills and expenses which are substantial with respect to her disposable income. Petitioner has submitted the following monthly bills: a mortgage with Wells Fargo, \$928.56; a mortgage with HFC, \$277.58; a gas bill from Philadelphia Gas Works, \$44.35; a water/sewer bill from the Water Revenue Bureau, \$47.96; and a telephone bill from Cavalier Telephone Company, \$60.20. These monthly bills total \$1,358.65. (Pet. Letter dated October 11, 2004, unmarked Exhs.). Petitioner has also listed her other monthly expenses which include: electric, \$65.00 and food, \$400. These monthly expenses total \$465.00. (Pet. Letter dated August 20, 2004). Petitioner's monthly bills and expenses total \$1,823.65. After deducting \$1,823.65 (Petitioner's monthly bills and expenses) from \$2,801.44 (Petitioner's monthly disposable pay) Petitioner is left with \$977.79 monthly or \$488.89 bi-weekly. If Petitioner's bi-weekly salary is also garnished for \$210.10, Petitioner is left with a disposable bi-weekly income of only \$288.89. The Board finds that an order for administrative garnishment of her disposable income at the maximum rate of 15% would

make Petitioner's financial circumstances worse by further limiting her ability to meet necessary expenses.

Upon due consideration, this Board finds that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. The Board further find the Secretary has clearly shown that the issuance of a wage garnishment order to achieve repayment of this outstanding debt was justified. However, the Board now finds that garnishment of fifteen (15) percent of Petitioner's disposable income constitutes financial hardship. Consequently, the Board finds that garnishment should be at a rate no greater than ten (10) percent of Petitioner's disposable income.

### **ORDER**

It is my determination that the amount to be garnished biweekly in satisfaction of this debt shall not exceed the sum of ten (10) percent of Petitioner's disposable income. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is vacated. 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 of 10% of Petitioner's disposable pay. The Secretary shall not be prejudiced from seeking an increase in the amount to be recovered by administrative wage garnishment if, in the future, Petitioner's income increases or her biweekly expenses for necessities are reduced.

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Jerome M. Drummond  
Administrative Judge

January 6, 2005