
In the Matter of:

Lisa A. Wilson,

Petitioner

HUDBCA No. 03-D-NY-AWG21
Claim No. 78-027153-9

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For the Secretary

DECISION ON ADMINISTRATIVE WAGE GARNISHMENT

Background

Petitioner has 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”). This alleged debt has resulted from a defaulted loan which was insured against non-payment by the Secretary of HUD. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations. The administrative judges of this Board have been designated to determine whether this debt is past-due and enforceable against Petitioner and, if so, whether the Secretary may collect the alleged debt by administrative wage garnishment. 24 C.F.R. § 17.170(b). Pursuant to 31 C.F.R. § 285.11(f)(10)(i), issuance of a wage withholding order was stayed until the issuance of this written decision.

The hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170, and is limited to a review of the written record, unless otherwise ordered. 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 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).

Summary of Facts and Discussion

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 review of the record of this proceeding is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170.

On April 16, 1997, Petitioner executed and delivered to Advanced Home Improvements, Inc. an installment note in the amount of \$47,246.00 for a home improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, hereinafter "Secy. Stat.", Exh. A). Petitioner subsequently defaulted on the note. Consequently, Advanced Home Improvements, Inc. assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. The Secretary is the holder of the note on behalf of the United States. (Secy. Stat., Exh. B, at 3).

Petitioner is indebted to the Secretary in the following amounts: \$15,109.55 as the unpaid principal balance as of April 30, 2003; \$881.44 as the unpaid interest on the principal balance at 5% per annum through April 30, 2003; \$479.73 as the U.S. Department of Treasury Debt Management Service fee; \$3,997.75 as the private collection agency (PCA) fee; and interest on said principal balance from May 1, 2003, at 5% per annum until paid. Id. at 4.

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount. The Secretary has asserted that if "Administrative Wage Garnishment is authorized, a garnishment at 15% would result in a repayment schedule under such garnishment order equal to \$145.28 bi-weekly." (Declaration of Lester J. West dated May 16, 2003). In support of this assertion, the Secretary has submitted the Declaration of Lester J. West dated May 16, 2003 which is unrebutted. Mr. West states:

8. On May 12, 2003, Petitioner faxed HUD a copy of her current pay stub for the pay period ending May 2, 2003 (Exhibit A). During a May 15, 2003 phone conversation between Petitioner and Thomas Sharlow, Debt Service Representative, the petitioner stated that the expense reimbursement listed on her pay stub is nontaxable income related to her teaching at the ministry school. According to the pay stub, Petitioner's gross year-to-date earnings as of May 2, 2003 were \$8,781.75; less allowable year-to-date deductions of \$65.00 indicate a net disposable pay of \$8,716.75. Based on this record, 15% of the Petitioner's average bi-weekly disposable income is \$145.28.

Id.

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 financial hardship. (Petitioner's Hearing Request form dated April 20, 2003). Petitioner claims that the "payback amount is an amount that [she] cannot make payments of \$1,000 a month and if someone would work with [her] for a little while until [she] get[s] other bills paid off then [she] probably could pay the \$1,000 a month." (Petitioner's letter dated April 22, 2003).

Petitioner, however, has failed to submit, as ordered, documentary evidence to substantiate her claims that the proposed repayment schedule would cause financial hardship, or to otherwise comply with or respond to this Board's order dated May 2, 2003. Thus, without evidence to substantiate Petitioner's allegations, I can find no legal basis for which the relief requested should be granted.

Petitioner also states that she is willing to repay the debt without the necessity of administrative wage garnishment. However, this Board is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206. Petitioner may also request a review of his financial status by submitting to that HUD Office a Title I Financial Statement (HUD Form 56142).

In the absence of evidence that administrative wage garnishment of up to 15% of Petitioner's disposable pay would cause undue hardship, I conclude that the debt at issue is past-due and enforceable against Petitioner by means of administrative wage garnishment of up to 15% of Petitioner's disposable pay.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. 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 to the extent authorized by law.

Jerome Drummond
Administrative Judge

July 3, 2003