



Office of Appeals  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001

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In the Matter of:

**Sherry Watkins,**  
Petitioner

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: HUDOA No. 10-H-CH-AWG86  
: Claim No. 78-0192644-0B

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*Pro se*

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For the Secretary

**DECISION AND ORDER**

On May 18, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Development (“HUD” or “the Department”). 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 United States Government.

The administrative judges of this Office have been designated to determine whether the Secretary of Housing and Urban Development (“Secretary”) may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. This 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. 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 show 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 a financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* Pursuant to 31 C.F.R. § 285.11(f)(4) and (f)(10), on May 19, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

### **Background**

On April 24, 1996, Petitioner executed a Title I Property Improvement Loan Retail Installment Contract (“Note”) to finance certain repairs to her home. (Secretary’s Statement (“Sec’y Stat.”), filed June 15, 2010, ¶ 1, Ex. 1.) Petitioner defaulted on the Note and was assigned to the Secretary pursuant to the provisions of the Title I Insurance Program. (Sec’y Stat., ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development, HUD (“Dillon Decl.”), ¶ 3, dated June 15, 2010.)

The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains delinquent. (Sec’y Stat., ¶ 3; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$21,249.41 as the unpaid principal balance as of May 31, 2010;
- (b) \$11,405.57 as the unpaid interest on the principal balance at 5.0% per annum through May 31, 2010; and
- (c) interest on said principal balance from June 1, 2010, at 5.0% per annum until paid.

(Dillon Decl., ¶4.)<sup>1</sup>

A Notice of Intent to Initiate Wage Garnishment dated April 29, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 5.) The Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under the terms agreeable to HUD in accordance with 31 C.F.R. § 285.11(e)(2)(ii), but Petitioner has not entered into a repayment agreement. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 6.) Pursuant to 31 C.F.R. § 285.11(i)(A), the Secretary’s proposed repayment schedule is \$210.66 per pay period, which represents 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 8.)

### **Discussion**

Petitioner challenges collection of the debt on the grounds that the terms of the proposed repayment schedule would create a financial hardship. Petitioner asserts, “I am currently the only source of income for my household. I have serious health issues and I

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<sup>1</sup> While the Secretary’s Statement refers to the Declaration of Kathleen M. Porter as the citation for this statement, the Court referred to the more accurate reference to the Declaration of Brian Dillon.

am raising my three grandchildren[,] ages 6, 5, [and] 3.” (Petitioner’s Request for Hearing (“Pet. Hr’g. Req.”), filed May 18, 2010.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship. In support of Petitioner’s argument, Petitioner provided this Office with copies of bills and payments, financial statements, pay statements, credit report and a copy of a court order appointing Petitioner as a guardian of three minor children. (Petitioner’s Documentary Evidence (“Pet’r Evid.”), filed August 2, 2010.)

According to Petitioner’s bi-weekly pay statement, for pay period ending May 9, 2010, Petitioner’s gross pay for the pay period totals \$1,730.77. (Pet’r Evid.; Dillon Decl., ¶ 8.) Petitioner’s disposable income is determined “after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes.” 31 C.F.R. § 285.11(c). After deducting allowable deductions, namely FICA \$107.31, Medicare \$25.10 and Federal W/H \$193.99, Petitioner is left with a disposable income of \$1,404.37 bi-weekly or \$2,808.74 monthly. (Pet’r Evid.; Dillon Decl. ¶ 8.)

Petitioner also submitted documentary evidence, along with proofs of payment, of the following essential monthly household expenses: mortgage, \$1,543.50; telephone, \$23.76; gas, \$21.82; water and sewer, \$80.00; power, \$57.27; garbage and recycle; \$57.27; Plain Commerce Bank Credit Card minimum monthly payment, \$25; Capital One Bank USA minimum monthly payment, \$25; and medical bills, approximately \$100. (Pet’r Evid.) Petitioner’s monthly charge of about \$207.01 for cable/satellite television and a bill of about \$302.95 from the Swiss Colony were not credited towards Petitioner’s essential monthly expenses because these expenses are not considered essential living expenses. (*Id.*) Thus, Petitioner’s essential household expenses total \$1,926.35 monthly.

Petitioner also provided the following documentary evidence of loans from various lenders, including Midland Credit Management, Inc. Settlement Opportunity, \$128.04; Moneytree Deferred Deposit Loan Agreement and Disclosure Statement, \$582.50; and CheckCity Partnership Deferred Deposit Loan Agreement, \$436.57. (*Id.*) Petitioner additionally provided documentary evidence of the following medical expenses: St. Rose Dominican Hospital, Dr. Jackson, Heart Center of Nevada and EPMG St. Rose Dominican Hospital of various amounts owed of \$ 246 and up. These loans and medical expenses, however, will not be credited towards Petitioner’s essential monthly expenses because Petitioner has not submitted sufficient documentary evidence to establish either a recent record of payment or the necessity of this expense being treated as a recurring monthly expense.

Petitioner’s monthly disposable income of \$2,808.74 less her monthly essential living expenses of \$1,926.35 leaves Petitioner with a remaining balance of \$882.39. A 15% garnishment rate of Petitioner’s current disposable income would equal approximately \$421.32 monthly, and leave Petitioner with a monthly disposable income of \$461.07. Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order

garnishment at a lesser rate based upon the record before it. However, in this case an order for administrative wage garnishment of Petitioner's disposable income at the rate of 15% would not create a financial hardship for Petitioner and would not affect Petitioner's ability to meet the monthly expenses that cover her basic household needs. Therefore, I find that Petitioner has not submitted sufficient documentary evidence to substantiate her financial hardship claim, and as such, Petitioner remains legally obligated to pay the alleged debt.

Petitioner may wish to attempt to negotiate repayment terms with the Department as this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

### **ORDER**

Based on the foregoing, I find that the debt that is the subject of this proceeding is enforceable in the amount alleged by the Secretary. 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 hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of \$210.66 per pay period which represents 15% of Petitioner's disposable income.



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Vanessa L. Hall  
Administrative Judge

November 15, 2010