



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

In the Matter of:

Carolyn Allen,
Petitioner

HUDOA No. 10-H-NY-AWG23
Claim No. 721005957

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Pro se

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For the Secretary

DECISION AND ORDER

On December 21, 2009, 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” or “Secretary”). (Petitioner’s Request for Hearing, filed January 6, 2010.) 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if 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), on January 6, 2009, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated January 6, 2009.)

Background

On August 2, 2006, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$2,542.20, in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), filed January 22, 2010, ¶ 2.) Paragraph 4 of the Subordinate Note cites specific events which make the debt become due and payable. One of those events is the payment in full of the primary note, which was insured against default by the Secretary. (Sec’y Stat., ¶ 3., Attached Note, ¶ 4(A)(I).)

On or about January 1, 2009, the FHA insurance on Petitioner’s primary note was terminated when the lender informed the Secretary that the note was paid in full. (Sec’y Stat., ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated January 21, 2010, ¶ 4.)

Upon full payment of the primary note, Petitioner was to pay off the Subordinate Note by sending payment to HUD “at c/o First Madison Services, Inc., 4111 South Darlington, Suite 300, Tulsa, OK 74135 any such other place as Lender may designate in writing by notice to Borrower.” (Sec’y Stat., ¶ 5.)

Petitioner failed to make payment on the Subordinate Note at the place and in the amount specified above. As a consequence, Petitioner’s debt to HUD is delinquent. (Sec’y Stat., ¶ 6.)

The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$2,542.20 as the unpaid principal balance as of December 31, 2009;
- (b) \$57.24 in unpaid interest on the principal balance at 4% per annum through December 31, 2009; and
- (c) interest on said principal balance from January 1, 2010 at 3% per annum until paid.

(Sec’y Stat., ¶ 7; Dillon Decl., ¶ 5.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated November 16, 2009 was sent to Petitioner. (Sec’y Stat., ¶ 8; Dillon Decl., ¶¶ 6.)

In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. As of January 21, 2010, Petitioner had not entered into a written repayment agreement in response to the Notice. (Sec’y Stat., ¶ 19; Dillon Decl., ¶ 7.)

On August 24, 2009, a Wage Garnishment Order was issued to Petitioner's employer by the Department of Treasury, Financial Management Service. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 8.)

Based on the issuance of the garnishment order, Petitioner's pay has been garnished one time totaling \$167.69. That garnishment payment has not yet been posted to HUD's account (Sec'y Stat., ¶ 11; Dillon Decl., ¶ 9.) Pursuant to 31 C.F.R. § 285.11(i)(A), the Secretary's proposed repayment schedule is \$167.69 bi-weekly or 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 10.)

Discussion

Petitioner alleges that collection of the debt by administrative wage garnishment would cause her extreme financial hardship. Petitioner states: "Due to my finances, I am unable to have the 15% garnished from my paycheck. I am not physically well and am under a doctors care for diabetes, high blood pressure and glaucoma." (Petitioner's Request for Hearing, filed January 6, 2010.) Petitioner further states:

Additionally I have a child that I have been raising since she was 5 years old with no child support... I realize that I owe these funds and definitely wish I had the money to pay them, but I don't. I cannot afford to have this amount of money taken from my paycheck... Please consider this garnishment a financial hardship for me.

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. As support, Petitioner submitted a copy of a Consumer Debtor Financial Statement with a list of her monthly expenses, but without accompanying proofs of payment. (Pet'r Hearing Req., attach.) Without the proofs of payment to support the monthly expenses listed and documentary evidence to substantiate Petitioner's monthly income, that list alone is insufficient as support for Petitioner's financial hardship claim. As a result, Petitioner was ordered by this Office on three separate occasions to provide the necessary documentation to prove that the terms of the proposed repayment schedule would cause financial hardship. (Notice of Docketing, Order, and Stay of Referral, dated January 6, 2010; Order, dated February 17, 2010; and Order to Show Cause, dated March 10, 2010.) Petitioner failed to comply with any of the Orders issued.

This Office has consistently held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Thus, without sufficient documentary evidence from Petitioner to substantiate Petitioner's claim of financial hardship, this Office is unable to determine, as required under 31 C.F.R. § 285.11(f)(8)(ii), whether the administrative wage garnishment sought by the Secretary would constitute a financial hardship for Petitioner. Therefore, I find Petitioner's claim of financial hardship fails for lack of proof.

Furthermore, Petitioner's failure to comply with any of the Orders issued by this Office is also in violation of. Rule 26.3 of Title 24 of the Code of Federal Regulations that provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a *determination against a noncomplying party*. (emphasis added).

Accordingly, I also find that Petitioner's non-compliance to the Orders issued by this Office also provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding exists and 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 at 15% of Petitioner's disposable income, or \$167.69 bi-weekly.



Vanessa L. Hall
Administrative Judge

July 23, 2010