



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

In the Matter of:

Dianne Pendleton,
Petitioner

HUDOA No. 10-H-NY-AWG84
Claim No. 780403975

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For the Secretary

RULING ON MOTION TO REOPEN AND ORDER

On February 28, 2008 this Office issued a Decision and Order in which it was 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 in the amount of 15% of Petitioner's disposable pay. On April 28, 2010, Petitioner filed a Request for Hearing in which she alleged that: "the garnishment is creating a hardship. Please review the financial statements and other documents previously submitted." On July 15, 2010, this Court informed Petitioner that the documentary evidence she relied upon in support of her claim of hardship was insufficient without further documentation that more specifically supported her claim. (Order, dated July 15, 2010.)

Thereafter, on July 28, 2010, Petitioner filed a letter in which her enrolled agent, who is acting as her Representative, stated: "On behalf of Ms. Pendleton, I am requesting a release of the garnishment against her wages which has been in effect for several months. This wage levy is causing extreme hardship to my client who is struggling to meet normal monthly expenses."

Petitioner's letter of submission is hereby deemed to be a Motion to Reopen ("Pet'r Mot."). In order to substantiate her claim of extreme financial hardship, Petitioner also submitted, along with the Motion to Reopen, copies of her 1040EZ for 2008, her most recent pay statements, and her Financial Statement in which she listed the household expenses she incurs on a monthly basis. For good cause shown, Petitioner's Motion to Reopen is hereby **GRANTED**.

In the February 28, 2008 Decision and Order ("Decision"), this Office stated, in relevant part:

Petitioner . . . asserts that 'the garnishment is causing a financial hardship.'

This Office, in its Notice of Docketing dated February 20, 2007, ordered the Petitioner to file evidence which will prove that the terms of the proposed repayment schedule are unlawful or would cause a financial hardship to Petitioner. Petitioner failed to respond. In a subsequent Order, dated May 3, 2007, this Office again ordered Petitioner to comply with the directive set forth in the Notice of Docketing. . . Petitioner again failed to respond. Petitioner has neither responded to nor filed documentary evidence that substantiates her claim of financial hardship. . . Thus, Petitioner's claim of financial hardship fails for lack of proof.

(Decision, at p. 3.)

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.) In light of the additional documentary evidence submitted to this Office by Petitioner, I am now reviewing Petitioner's request for review of her garnishment amount due to materially changed financial circumstances as alleged by Petitioner.

As support, Petitioner has submitted documents reflecting her current income and monthly expenses. (Pet'r Mot., Attach.; Petitioner's Letter, filed August 2, 2010 ("Pet'r Ltr."), Attach.) Petitioner's two most recent bi-weekly pay statements for the pay periods ending May 22, 2010 and July 17, 2010 indicate that her gross pay totals \$3,085.88 per month. (Pet'r Ltr., Attach.) As is the practice of this Office, Petitioner's disposable pay 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 - federal and state taxes and health insurance premiums for dental, HMO, and vision - Petitioner is left with a disposable pay of \$2,665.21 per month. (*Id.*)

Petitioner also submitted documentary evidence of the following essential monthly household expenses: rent, \$800; gas, \$260; electricity, \$125; car payment, \$250; car insurance,

\$150; food, \$500; Capital One minimum payment, \$250; Credit One minimum payment, \$75; phone, \$50; and medical \$50. (Pet'r Mot. Attach.) These essential expenses total \$2,510.00. Petitioner also submitted evidence for cable, \$100; life insurance, \$26; and personal care and entertainment, \$100, but these expenses were not credited towards Petitioner's monthly expenses as they were not considered credible as necessary living expenses. (*Id.*) As a result, based on the documentation provided, Petitioner's total monthly household expenses remain at \$2,510.00 per month.

Petitioner's monthly disposable pay of \$2,665.21, less her essential living expenses of \$2510.00, leaves Petitioner with a balance of \$155.21. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$399.78 per month and leave Petitioner with a negative balance of (-\$244.57). A 10% garnishment rate would lower Petitioner's garnishment amount to \$266.52 per month but would still result in a negative balance of (-\$111.31). A 5% garnishment of Petitioner's monthly disposable pay would equal \$133.26, and thus result in a balance of \$21.95.

The Secretary has disputed Petitioner's allegation of financial hardship as a matter not to be considered in this case. (Secretary's Statement ("Sec'y Stat."), filed June 30, 2010; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center for HUD ("Dillon Decl."), dated June 23, 2010, ¶ 9). The Secretary stated, in relevant part:

On April 28, 2010[,] Petitioner alleged wage garnishment deductions of 15% of her net pay creates [a] financial hardship. She provided HUD with copies of 2 pay stubs from the periods beginning December 20, 2009 – January 2, 2010 and January 3, 2010 – January 16, 2010 as well [as] other financial data. Included in Petitioner's correspondence was a listing of her fixed monthly expenses on which she reported[,] among other obligations, a car payment of \$250.00 as well as revolving debt of \$11,900.00 to Capital One with monthly payments of \$250.00. (See attached Exhibit "B")

(Dillon Decl. ¶ 9.)

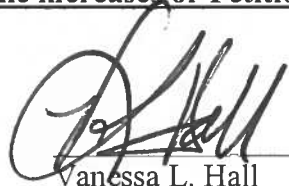
However, while the Secretary has established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, I find, upon due consideration of Petitioner's additional evidence, that the Petitioner has submitted sufficient documentary evidence to substantiate that her financial circumstances have materially changed.

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 in cases where financial hardship is found. In this case, an administrative wage garnishment at any rate against the Petitioner would constitute a severe financial hardship, and would leave Petitioner without sufficient means to maintain an average standard of living, or to cover other miscellaneous expenses that may be deemed necessary on a monthly basis.

ORDER

Based on the foregoing, the wage garnishment order authorized by the Decision and Order in *Dianne Pendleton*, HUDOA No. 07-O-NY-AWG28 (February 28, 2008), is hereby **REVERSED** and **MODIFIED** to revoke such authorization as of the date of this Ruling on Motion to Reopen and Order. The Secretary is hereby **STAYED**, indefinitely, from referring this matter to the U.S. Department of the Treasury for administrative wage garnishment until further Order from this Office.

The Secretary shall not be prejudiced, however, from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or Petitioner's expenses for necessities are reduced.



Vanessa L. Hall
Administrative Judge

September 28, 2010