



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

In the Matter of:

Elizabeth Brown
a/k/a Elizabeth Godfrey,

Petitioner.

HUDOA No: 10-M-CH-AWG105
HUD Claim No: 721006418

Elizabeth Brown
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Pro se

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For the Secretary

DECISION AND ORDER

On July 14, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to 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 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 an undue 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 July 15, 2010, 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 July 15, 2010.)

Background

On or about October 11, 2001, Elizabeth Brown, a/k/a Elizabeth Godfrey (“Petitioner”) executed and delivered to the Secretary a Subordinate Note (“Note”) to secure a partial claim in the amount of \$9,341.04 paid by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her primary residence. (Secretary’s Statement (“Sec’y Stat.”), filed July 30, 2010, ¶ 2.) The Secretary paid this partial claim pursuant to 24 C.F.R. 203.371. (*Id.*)

The Note provides that payment becomes due upon the occurrence of certain events or conditions. (Sec’y Stat., ¶ 3.) One such condition is when the borrower pays the primary note in full. (*Id.*) On or about February 7, 2007, the FHA mortgage insurance on the first mortgage was terminated as the lender indicated the mortgage was paid in full, thus making the Note immediately due. (*Id.*; Ex. B. Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated July 26, 2010, ¶ 4.)

Petitioner is currently in default on the Note. HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$9,341.04 as the unpaid principal balance as of June 30, 2010;
- (b) \$186.80 as the unpaid interest on the principal balance at 3% per annum through June 30, 2010; and
- (c) interest on said principal balance from July 1, 2010, at 3% per annum until paid.

(Sec’y Stat., ¶ 8; Dillon Decl., ¶ 5.) On or about May 28, 2010, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec’y Stat., ¶ 7; 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, but did not elect to do so. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 7.) Petitioner provided a copy of her monthly pay statement for the period ending on July 31, 2010. (Dillon Decl., ¶ 9, Ex. A.) This pay statement indicates that Petitioner’s pay totaled \$5,226.58. With allowable deductions pursuant to regulation, Petitioner’s disposable pay totals \$4,731.43. (Dillon Decl., ¶ 9, Ex. A.) Based on the pay statement, the Secretary proposes administrative wage garnishment in the amount of \$709.72 per month or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 10; Dillon Decl. B ¶ 9.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists or that the amount of the alleged debt is incorrect. Petitioner may also 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 by operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner disputes the existence of the debt in this case. Specifically, Petitioner argues:

In... response to the alleged debt of 12,136.00, I still maintain that I do not owe the debt I am charged with for the period of 10 months in 2001. At this present time I am still awaiting information from Chase Mortgage to dispel the claim that I was 10 months delinquent in the mortgage payments during the aforementioned year.

(Pet'r's Ltr., dated September 27, 2010.)

On three separate occasions, this Office ordered Petitioner to file documentary evidence to prove that the debt in this case is not enforceable or past due. (Notice of Docketing; Order, dated September 3, 2010; and Order, dated September 30, 2010.) The September 30th Order stated, "Failure to comply with this Order shall result in a decision based on the documents in the record of this proceeding." (emphasis in original) Petitioner did not comply with any of these orders which required her to submit documentary evidence to prove her allegations. Although Petitioner stated that she was "waiting for Chase Mortgage to dispel the claim" that letter was dated September 27, 2010. As of the date of this Decision and Order, Petitioner has not produced that evidence, nor requested an extension of time to produce said evidence. Petitioner has, therefore, not met her burden to prove that the debt in this case is not past due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, this Office finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner as set forth in the Notice of Intent to initiate Administrative Wage Garnishment Proceedings.

The Notice of Docketing also ordered Petitioner to file documentary evidence to support her financial hardship claim. (Notice of Docketing, p. 2.) The Notice of Docketing stated that "[t]o prove financial hardship, Petitioner's documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment of household expenses." (emphasis in original) (*Id.*)

On October 20, 2010 Petitioner filed a letter and documentary evidence with this office stating:

All . . . expenses paid in my household for myself and 4 sons are based on my income. Therefore I am requesting an arrangement to pay \$337.00 per month for the next 36 months. I would like to be able to continue payments for living expenses that are necessary to maintain the operation of my household without experiencing financial hardship on a monthly basis. Your consideration in this matter is greatly appreciated." I was hoping for 3% to 5%.

(Pet'r's Ltr, dated Sept 27, 2010.)

Petitioner submitted financial documentation of essential monthly expenses showing: Chase mortgage payment, \$1129.50; electric, \$448.92; automobile insurance, \$143.08; dentistry, \$128.00; AT&T Phone, \$80.32 (including internet \$25.00); and automobile payment, \$825.04. This Office deems automobile payment to be excessive. The automobile payment and the internet payment are not essential monthly expenses. *See, Charlotte Cooper*, HUDOA No. 09-M-CH-AWG71 (June 25, 2009) (finding that, "Petitioner's expenses reflect a living standard that can be adjusted downward to repay Petitioner's substantial, unpaid debt to HUD.") Therefore, for these bills, Petitioner will only be credited for automobile payment, \$412.50; and AT&T Phone, \$55.48; (less internet, \$25.00.)

Petitioner's expenses for the groceries, \$600.00; and gasoline, \$500.00; were not supported by documentary evidence (i.e., receipts or proof of payment.) Without documentary evidence, those listed expenses normally would not be included. However, in *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, p. 4 (July 30, 2004), this Office held that credit may be given to certain essential monthly living expenses in instances where the Petitioner does not provide bills or other documentation. Accordingly, Petitioner will be credited with \$300.00 for gasoline and \$600.00 for groceries. Therefore, Petitioner's essential monthly expenditures are adjusted to \$3217.50.

Petitioner's monthly disposable income of \$4731.43 less her monthly bills and expenses of \$3217.50 leaves a remaining balance of approximately \$1513.93 per month. The Secretary has proposed a repayment schedule of fifteen (15) percent, which amounts to \$709.72 of Petitioner's disposable monthly pay and leaves Petitioner with a positive balance of \$804.21 to meet any additional expenses Petitioner may have. Upon consideration, this Office finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary and garnishment of fifteen (15) percent of Petitioner's disposable income would not constitute a financial hardship.

Additionally, although Petitioner is "requesting an arrangement to pay \$337.00 per month for the next 36 months" (Pet'r's Ltr., dated Sept 27, 2010), this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish 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 a Title I Financial Statement (HUD Form 56142) to her local HUD Office.

ORDER

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be past due and 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 15% of Petitioner's disposable pay, or \$709.72 per monthly pay period, until fully paid.



H. Alexander Manuel
Administrative Judge

January 5, 2011