UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:	
Caroline S. Nosworthy aka Caroline S. Burgess,	HUDOA No.: 11-H-CH-AWG103
	Claim No. 7-704602660B
Petitioner	September 14, 2012

RULING AND ORDER UPON RECONSIDERATION

On January 20, 2012 Petitioner filed a letter, via e-mail, deemed to be a Motion for Reconsideration of the Decision and Order in *In re Caroline S. Nosworthy aka Caroline S. Burgess*, HUDOA No. 11-H-CH-AWG103 (Jan. 13, 2012) ("Decision"). In the Decision, the Court found that the debt in this case was past due and legally enforceable in the amount claimed by the Secretary. (Decision 5.) Petitioner objects to the Decision on two grounds: (1) materially changed circumstances resulting in financial hardship; and (2) lack of notification regarding the debt.[1] (Letter from Pet'r., filed Jan. 20, 2012.) On March 1, 2012, this Court ordered that Petitioner's Motion for Reconsideration be taken under advisement. (Ruling on Pet'r's Mot. to Reopen and Order, dated Mar. 1, 2012.)

Standard of Review

Reconsideration of a prior decision is within the discretion of the administrative judge and will not be granted "in the absence of compelling reasons, e.g., newly discovered material evidence or clear error of fact or law." *See Paul Dolman*, HUDBCA No. 99-A-NY-Y41 (Nov. 4, 1999); *Anthony Mesker*, HUDBCA No. 94-C-CH-S379 (May 10, 1995); *William G. Grammer*, HUDBCA No. 88-3092-H607 (Mar. 7, 1988). Further, "it is not the purpose of reconsiderations to afford a party the opportunity to reassert contentions that have been fully considered and determined." *See Seyedahma Mirhosseini*, HUDBCA No. 95-A-SE-2615 (Jan. 13, 1995); *Charles Waltman*, HUDBCA No. 97-A-NY-W196 (Sept. 21, 1999). According to 31 C.F.R. § 285.11(k),"a debtor whose wages are subject to a wage withholding order . . . may, at any time, request a review by the agency . . . based on materially changed circumstances such as disability, divorce, or catastrophic illness."

Discussion

Petitioner first asserts that garnishment in the amount proposed by the Secretary would

[1] Petitioner also argues in her Motion for Reconsideration that HUD should pursue collection from her ex-husband pursuant to the terms of the divorce decree. (Letter from Pet'r.) However, the Court thoroughly addressed and decided this issue in its Decision. (*See* Decision 3-4.) Therefore, the Court will not further discuss the issue in this Ruling and Order Upon Reconsideration.

create a financial hardship due to her separation and subsequent divorce from her husband. (Docs. from Pet'r., filed Mar. 13, 2012.) Therefore, Petitioner's divorce brings her Motion for Reconsideration within the ambit of 31 C.F.R. § 285.11(k) as she has sufficiently demonstrated materially changed circumstances.

As support for her financial hardship claim, Petitioner submitted copies of her bi-weekly paystubs as well as copies of various bills. (*Id.*) Petitioner's bi-weekly gross pay is $2,676.15, or $5,352.30 monthly. The Secretary is authorized to garnish up to 15% of the debtor's disposable pay, which is determined "after the deduction of health insurance premiums and any amounts required by law to be withheld. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, $648.10; Medicare, $73.84; and health insurance, $259.34, Petitioner is left with a monthly disposable income of $4,371.02. (*Id.*)

Petitioner submitted documentary evidence of the following essential monthly household expenses: car insurance, $145.62; electricity, $147.50; car payment, $404.75; mortgage, $542.63; and parking, $27.06. (Docs. from Pet'r.) Petitioner also provided a copy of her cell phone bill with accompanying charges for data plans. (*Id.*) While this Court does not typically consider cell phones or Internet to be essential expenses, Petitioner has sufficiently explained her need for the expense. For instance, Petitioner states that her work requires her to use a cell phone, particularly because she does not have a land line. (Letter from Pet'r.) Further, the Internet usage through the data plans is necessary for Petitioner's children to do school work. (Docs. from Pet'r.). As a result, this Court will credit Petitioner for cell phone and data plan expenses in the amount of $257.37.

Petitioner failed to file documentary evidence to support her claimed expenses of gasoline, $350; food, $450, and a water bill, $38.63. (*See* Docs. from Pet'r.) However, this Court has held that credit may be given to certain essential monthly living expenses in instances where the Petitioner lists monthly expenses but does not provide bills or other documentation. *David Herring*, HUDOA No. 07-H-NY-AWG53, at 4-5 (July 28, 2008); *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, at 4 (July 30, 2004). Similarly, in this case, the Court will consider allowances to pay for reasonable and necessary living expenses, such as Petitioner's expenses of food, gasoline, and water bill.

The following expenses are not included as part of Petitioner's essential household expenses because Petitioner has not submitted sufficient documentary evidence to establish that they are essential household expenses: IRS debt, $1,142.15; loan from Bank Texas, National Association, $396.06; debt from Home Depot, $74; MasterCard, $58.73; Citibank, $293.70; Capital One Bank, $1,022.51; U.S. Bank, $1,247.58; and Bank of America, $2,651.89.

Petitioner will not be credited with her claimed IRS expense because there is no evidence that it is a recurring expense. For instance, the IRS bill Petitioner provided shows an amount of $1,142.15 due immediately. (Docs. from Pet'r.) This indicates that the debt requires a one-time payment, rather than monthly recurring payments. This Court also will not credit Petitioner with payments made toward a Home Depot account as Petitioner failed to indicate whether the purchases reflected under this account constitute necessary expenses. Further, the loan from

Bank Texas, which Petitioner claimed was for gasoline and food, will not be credited towards Petitioner's expenses since this Court has already accounted for Petitioner's stated expenses of food and gasoline, as explained above.

Petitioner in addition will not be credited for claimed credit card expenses towards MasterCard, Citibank, Capital One Bank, U.S. Bank, or Bank of America. While Petitioner shows a good faith effort to make payments on these accounts, Petitioner has not provided proof of the types of expenses the credit cards cover. Without proof that these credit card expenses represent payments for necessary household items, this Court is without authority to credit Petitioner with their payment. Additionally, Petitioner states that payments toward Capital One Bank will end September 30, 2012, indicating that this particular account will not be a recurring monthly expense for Petitioner. (*See* Docs. from Pet'r.)

Petitioner's disposable income exceeds her living expenses by $2,007.46. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of $665.65 per month and would leave Petitioner with a positive balance of $1,351.81.[2] Therefore, I find that Petitioner has failed to meet her burden of proof that the proposed repayment schedule would create a financial hardship.

Petitioner next challenges sufficiency of notice on the grounds that HUD failed to provide her with proper notification of the intent to initiate wage garnishment and proper notification that the debt still existed. (Pet'r's Letter; Docs. from Pet'r.) Petitioner claims that she never received a Notice of Intent to Initiate Wage Garnishment, stating that "[n]otice was never given to me." (Docs. from Pet'r.; *see also* Pet'r's Hr'g. Req., filed June 1, 2011.) Petitioner, also claims that the Notice was sent to the wrong address and should have instead been mailed to "P.O. Box 609, Ben Wheeler, TX 75754." (Pet'r's Hr'g. Req.)

The Secretary counters by stating that a Notice of Intent to Initiate Administrative Wage Garnishment, dated April 6, 2010, was sent by Certified Mail to Petitioner at 2093 FM 279, Ben Wheeler, TX 75754. (Sec'y Stat. ¶ 5, filed Aug. 8, 2011; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated June 21, 2011.) As proof, the Secretary submitted a copy of the Notice. (Sec'y Stat., Ex. A1.) The Secretary admitted that the Post Office returned the Notice as "Unclaimed," but explained that in sending the Notice to Petitioner, he relied on an Experian Report indicating Petitioner's most current address as 2093 FM 279, Ben Wheeler, TX 75754. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 5.)

31 C.F.R. § 285.11(e) sets forth the notice requirements for an administrative wage garnishment. Under this section, the Secretary is required, at least 30 days before initiating garnishment proceedings, to mail by first class to the debtor's last known address a written notice informing the debtor of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the debtor's rights. According to the record, Petitioner has resided at three different addresses between 1992 and 2012, thus it seems reasonable that the Secretary's reliance on the Experian Report to

[2] In addition to the $1,351.81 remaining after garnishment, Petitioner receives $1,716 per month in child support payments. (Docs. from Pet'r.) This amount should offset much, if not all, of Petitioner's expenses related to her two children.

determine Petitioner's most recent address is credible. (Pet'r's Hr'g. Req.) Relying also on the notice requirements provided under the Texas statute, there is no requirement that the debtor must actually receive notice, only that the lender sends it. (*See Byrd v. General Motors Acceptance Corp.*, 581 S.W.2d 198 (Tex.Civ.App. 1989), *Debbie Sharka,* HUDBCA No. 91-A-6053-N57 (March 27, 1992). A Notice of Intent is effective upon dispatch, *if properly and reasonably addressed.* (emphasis added) *Kenneth Holden*, HUDBCA No. 89-3781-K293 (June 6, 1989) Therefore, consistent with case law precedent, I find that the Secretary satisfied the notice requirements under 31 C.F.R. § 285.11(e) by sending to Petitioner the April 6, 2010 Notice.

Finally, Petitioner again claims that HUD "waited over 20 years to notify" that the debt still existed. (Docs. from Pet'r.) Petitioner states, "After sending a copy of my divorce [decree] stating the debt belonged to my ex-husband I never heard anything else from HUD until the wage garnishment in May 2010. . . . "[D]oes HUD not bare [sic] at least a little responsibility for lack of notification?" (*Id.*)

As the Court previously determined in its Decision, the terms of the Note included a waiver provision in which Petitioner agreed to waive the right to require HUD to give notice that amounts due have not been paid. (Decision 5; Sec'y Stat., Ex. A.) Therefore, this argument is merely a reassertion of an issue that has already been fully considered and determined in the Initial Decision. It is irrelevant that HUD "took over 20 years" before initiating administrative wage garnishment because it has long been established that there is no statute of limitations for administrative wage garnishment or administrative offset cases. *See In re Thomas A. Franzman*, HUDOA No. 09-H-CH-AWG156 (Jan. 8, 2009). In the case of *In Re Douglas P. Hansen*, HUDBCA No. 06-A-CH-AWG03, at 3 (Feb. 13, 2007), this Court adopted the holding of the U.S. Supreme Court in *BP America Production Co. v. Burton*, 127 S. Ct 638, 643 (2006) and reversed its decision in the initial *Hansen* decision by finding that "no statute of limitations exists in administrative proceedings without the inclusion of a clear, legislative time period by Congress." See *BP America Prod. Co. v. Burton*, 127 S. Ct. 638 (2006); *In re Karen T. Jackson*, HUDOA No. 09-H-NY-AWG87, at 3 (June 3, 2009).

The controlling statute in the instant case, 31 U.S.C. § 3720D, does not contain a time limitation in which the government is required to bring such administrative actions. As a result, no statute of limitations bars agency enforcement action by means of administrative wage garnishment. I find, therefore, that the Secretary is not barred from initiating wage garnishment proceedings to recover the outstanding debt despite the passage of time to which Petitioner objects. *See In re Thomas A. Franzman*, HUDOA No. 09-H-CH-AWG156 (Jan. 8, 2009).

ORDER

Based on the foregoing reasons, Petitioner's Motion for Reconsideration is **DENIED**. It is hereby

ORDERED that the administrative wage garnishment order authorized by the Decision and Order, *Caroline S. Nosworthy aka Caroline S. Burgess*, HUDOA No. 11-H-CH-AWG103,

dated January 13, 2012, **SHALL NOT BE MODIFIED** and shall remain **IN FULL FORCE AND EFFECT**.

Vanessa L. Hall
Administrative Judge