

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

In the Matter of:

Brian Allen,

Petitioner

HUDOA No. 11-H-CH-AWG147
Claim No. 780695786

September 13, 2012

RULING AND ORDER ON RECONSIDERATION

In a *Decision and Order* issued in the above-captioned case on July 29, 2011, the Court found that the debt that is the subject of this proceeding was past due and legally enforceable against Petitioner. *Brian Allen*, HUDOA 11-H-CH-AWG147 (February 14, 2012). The Secretary, in response, brought to the Court's attention that Petitioner had submitted additional evidence to the Secretary that apparently had not been properly filed with the Court for consideration. (Petitioner's Response ("Pet'r's Resp."), filed February 15, 2012, Attachs.) To ensure that the record was complete and that all evidence had been considered, the Court decided to reconsider this case *sua sponte* in order to review the additional evidence from Petitioner. (See *ConocoPhillips Co. v. U.S. E.P.A.*, 612 F.3d 822, (5th Cir., 2010) (Embedded in an agency's power to make a decision is its power to reconsider that decision; however, agency may not reconsider its own decision if to do so would be arbitrary, capricious, or an abuse of discretion.)

STANDARD OF REVIEW

Under HUD regulations, "a debtor whose wages are subject to a wage withholding order under this section 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) 31 C.F.R. § 285.11(k)(1). The burden is on Petitioner to submit the basis for his financial hardship claim and adequate documentation for such claim. 31 C.F.R. § 285.11(k)(2).

DISCUSSION

Petitioner disputes the terms of the proposed repayment schedule and asserts that garnishment of his wages will cause financial hardship. (Pet'r's Resp.) As a basis for reconsideration, the Court considered additional documentation from Petitioner in support of his financial hardship claim.

As proof of his claim of financial hardship, Petitioner submitted documentary evidence to substantiate his monthly income as well as proofs of payment for his monthly expenses.

For his income, Petitioner provided a weekly pay statement for the week ending September 16, 2011. (Pet'r's Resp.) This pay statement indicated that Petitioner's weekly gross pay totaled \$793.20. After subtracting allowable deductions totaling \$106.10 (Social Security, \$32.04; Fed Tax, \$32.63; Medicare, \$11.07; Health Insurance Premiums, \$30.36), Petitioner's weekly disposable pay was reduced to \$687.10, or \$2,748.40 per month.

As further support of his claim of financial hardship, Petitioner also provided an itemized list of monthly expenses, as well as copies of credible proofs of payment in support of the named expenses. (Pet'r's Resp.) Petitioner identified the following monthly expenses as essential expenses: mortgage, \$873.91; car/truck loan, \$537.61; electricity bill, \$217.23; automobile insurance, \$47.02; garbage collection, \$20.00; water, \$44.85; septic system inspection, \$8.33; cell phone, \$30.00; medical, \$20.00; groceries, \$400; child support, \$110.77; and, fuel, \$250.00. The sum of Petitioner's monthly expenses totaled \$2559.72.

In this case, the Secretary did not seek to garnish 15% of Petitioner's disposable pay, but instead proposed to garnish less than the Federal Agency allowed amount of 15%, that being a proposed wage garnishment amount of \$61.00 weekly. (Sec'y Stat., ¶ 9.) This Court has the authority to order garnishment at an even lesser rate than the amount proposed by the Secretary, particularly in cases in which Petitioner has proven a claim of financial hardship. 31 C.F.R. § 285.11(k)(3). Based upon the evidence presented by Petitioner, an order for administrative wage garnishment of Petitioner's disposable income in the amount proposed by the Secretary would create a financial hardship. Petitioner's disposable pay of \$2,748.40 exceeds his monthly living expenses of \$2559.72 by only \$188.68. The Secretary's garnishment amount would increase Petitioner's monthly expenses by \$244.00, and would result in a negative balance of (-\$55.32). Even if the percentage of the garnishment amount of Petitioner's disposable pay was reduced, it would at best only leave Petitioner with a minimum monthly balance to sustain any remaining miscellaneous expenses incurred from month to month.

While the Secretary has successfully 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 reconsideration, that Petitioner has successfully proven by a preponderance of the evidence his claim of financial hardship. Imposing an administrative wage garnishment at any rate against Petitioner at this time would constitute a severe financial hardship.

ORDER

Based on the foregoing, the wage garnishment order authorized by the Decision and Order in *Brian Allen*, HUDOA No. 11-H-CH-AWG147 (February 14, 2012), is hereby **REVERSED** and **MODIFIED** to revoke such authorization as of the date of this Ruling and Order on Reconsideration.

The Secretary is hereby **STAYED**, indefinitely, from continuing referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment until further Order from this Court. It is hereby

ORDERED that the Secretary shall refund to Petitioner any amounts previously collected that were improperly withheld, if applicable.

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

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge