



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

In the Matter of:

Tracy Vickers,
Petitioner

HUDOA No. 11-H-CH-AWG24
Claim No. 780354095

Tracy Vickers
98 Aspen Court
Evergreen, CO 80439

Pro se

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For the Secretary

DECISION AND ORDER

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"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment a mechanism for the collection of debts owed to the United States Government.

The administrative judges of this Office have been designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 November 12, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage

withholding order had previously been issued against Petitioner. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated November 12, 2010.)

Background

On March 27, 1995, Petitioner executed a Retail Installment Contract-Security Agreement (“Note”) under the provisions of the Title I insurance program. (Secretary’s Statement (“Sec’y. Stat.”), filed November 29, 2010, ¶ 1, Ex. 1.) After default by Petitioner, the Note was assigned to HUD under the regulations governing the Title I Insurance Program. (Sec’y. Stat., ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated November 29, 2010, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$7,869.13 as the unpaid principal balance as of October 31, 2010;
- (b) \$826.35 as the unpaid interest on the principal balance at 6.0% per annum through October 31, 2010;
- (c) interest on said principal balance from November 1, 2010, at 6.0% per annum until paid.

(Sec’y. Stat., ¶ 3, Ex. #2; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 30, 2010 was sent to Petitioner. (Sec’y. Stat., ¶ 5; Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. As of this date, Petitioner has not entered into a written repayment agreement. (Sec’y. Stat., ¶ 6; Dillon Decl., ¶ 6.) As a result, the Secretary proposes a repayment schedule of \$210.99 bi-weekly or 15% of Petitioner’s disposable pay. (Sec’y. Stat., ¶ 8; Dillon Decl., ¶ 8.)

Discussion

Petitioner challenges collection of the debt on the grounds that an administrative wage garnishment in the amount requested by the Secretary will create a financial hardship. (Petitioner’s Hearing Request (“Pet’r Hr’g Req.”), filed November 9, 2010.)

Specifically, Petitioner states that the proposed wage garnishment “will put my family in immediate danger of poverty.” (*Id.*) Petitioner claims that she supports three minor children who live in her household, as well as her husband who “does not work as he is in the process of obtaining a temporary work Visa as he is an Australian citizen.” (Petitioner’s Letter (“Pet’r’s”), filed January 10, 2011.) Further, Petitioner’s household also includes her 22 year old son, who “contributes to the household by purchasing food when it is necessary” but who “is also working to further his education” and therefore “does not contribute money to the actual household expenses.” (*Id.*) Petitioner claims her ex-husband, a co-signor on the Note and father of one of her minor children, “has been ordered to pay child support,” but she has “not received a dime

from him . . . as he refuses to obtain a legitimate job knowing that he owes money to [HUD] and to the IRS.” (Pet’r Hr’g Req.) In support of her financial hardship claim, Petitioner provided copies of all of her bi-weekly pay statements for the 2010 calendar year, the lease for her current residence, nine months worth of bank statements for her checking account, and the billing history for her telephone account.

The Secretary is authorized to garnish up to 15% of a debtor’s disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor’s gross pay. 31 C.F.R. § 285.11(i)2(i), (c). Petitioner states: “I currently make \$45,877.537 a year. I bring home \$1,318.44 bi-weekly which equals \$2,636.88 per month.” (Pet’r Hr’g Req.)

The most recent pay statement, for the two-week period ending December 19, 2010, shows that \$1,318.44 was deposited in Petitioner’s checking account. However, Petitioner’s gross earnings for the pay period were \$2,332.16, which includes \$1,764.52 in regular time earnings and over \$550 in “flex credits” for medical, vision, dental, life insurance, and LTD. Because disposable pay is based on “the debtor’s compensation (including, but not limited to, salary, bonuses, and vacation pay),” 31 C.F.R. § 285.11(c), flex credits and other forms of compensation (such as payments from a quarterly incentive plan) are included in the calculation of Petitioner’s disposable pay.

Petitioner’s pay statements indicate that her total compensation for 2010 through the pay period ending December 19 was \$63,244.57, or \$5,270.38 per month. After subtracting the allowable deductions for federal income tax withholding (\$240.90 monthly average); FICA Medicare (\$55.50 monthly average); federal OASDI/disability (\$237.29 monthly average); Colorado income tax withholding (\$103.17 monthly average); Denver taxes (\$5.75 monthly average); health insurance (\$1,244.35 monthly average); dental insurance (\$118.52 monthly average); and vision insurance (\$19.08 monthly average), Petitioner is left with monthly disposable income of \$3,245.77.

Petitioner initially estimated as monthly household expenses: \$1,350.00, rent; \$400.00, food; \$200.00, electricity; \$35.00, phone; \$69.00, car insurance; \$320.00, gasoline; and, \$158.00, television and Internet combined. (Pet’r Hr’g Req.) Petitioner later provided a number of documents in support of these estimates. (See Pet’r’s, enclosures.) In support of her claims for household expenses, Petitioner provided a copy of her Residential Lease to substantiate her rental payment, and a copy of the billing statement from her telephone service provider substantiating Petitioner’s claim of \$35 per month for telephone service. Petitioner also provided copies of nine bank statements reflecting payments of the monthly expenditures she incurred from December 2009 to September 2010. A review of those bank statements substantiated, with more specificity, Petitioner’s average monthly expenditures as follows: \$285.25, grocery; \$165.70 (twice a month), gasoline; \$99.44 (three times a month), electricity; and \$7.47 for trash removal.

Of the monthly expenses identified by Petitioner, this Office does not consider the expenses listed for television or Internet service as essential household expenses, and thus, Petitioner will not be credited for the costs incurred for those services. While the expenses

claimed by Petitioner for groceries, gasoline, car insurance, and electricity are somewhat lower than the estimates provided by Petitioner in her Hearing Request, this Office has determined that credit may be given for certain essential living expenses based on a Petitioner's estimates when the "financial information submitted by [the] Petitioner . . . [was found to be] generally credible . . ." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (*quoting Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Petitioner has provided such necessary and generally credible evidence in this case. As a result, consistent with *Herring* and *Loera*, this Office will credit Petitioner with her full monthly estimate for food, at \$400.00; for electricity, at \$200.00, and for gasoline expenses, at \$320.00.

Based on the foregoing, this Office will credit Petitioner the following amounts per month for essential household expenses: \$1,350.00 for rent; \$35.00 for phone service; \$400.00 for food; \$320.00 for gasoline; \$200.00 for electric service; \$7.47 for trash removal; and \$69.00 for car insurance, that combined total \$2,346.82. Petitioner's disposable income of \$3,245.77 less her essential household expenses of \$2,346.82 leaves a remaining balance of \$898.95 per month. A 15% garnishment rate of Petitioner's monthly disposable income equals \$486.87, with Petitioner being left with a balance of \$412.08 per month, an amount sufficient to sustain any other miscellaneous monthly expenses she may incur. Therefore, since Petitioner has not sufficiently proven her financial hardship claim within the meaning of 31 C.F.R. § 285.11(f)(8)(ii), Petitioner remains legally obligated to pay the alleged debt in the amount claimed by the Secretary.

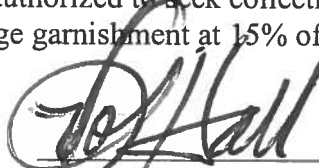
As a final point, Petitioner requests a payment plan of \$100.00 per month. (Pet'r Hr'g Req.) Petitioner is advised that this Office is not authorized to consider any settlement offer or waiver of interest request on behalf of HUD. However, Petitioners may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

ORDER

Based on the foregoing, I find that the debt that is the subject of this proceeding 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.



Vanessa L. Hall
Administrative Judge

June 2, 2011