

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

In the Matter of:

PAMELA BOWERS,

Petitioner.

HUDOA No. 11-H-CH-AWG84
Claim No. 78-0576754-0B
Date June 8, 2012

DECISION AND ORDER UPON RECONSIDERATION

In the Amended Decision and Order (“Decision”) dated October 28, 2011, this Court found that “Petitioner has not met her burden of establishing, by a preponderance of the evidence, that the Secretary’s proposed repayment schedule would create a financial hardship for her.” (Decision and Order, dated October 28, 2011.) On November 3, 2011, Petitioner filed a Motion for Reconsideration, which was held in abeyance. (Petitioner’s Motion for Reconsideration (“Pet’r’s Mot. for Recon.”), dated Nov. 3, 2011; Ruling on Mot. for Recon., dated March 20, 2012.) This Court granted the Secretary leave to file a response to Petitioner’s Motion for Reconsideration. (Ruling on Mot. for Recon.) Petitioner’s Motion for Reconsideration is now GRANTED.

Reconsideration is within the Court’s discretion and will not be granted in the absence of compelling reasons, e.g., newly discovered material evidence, clear error of fact or law, or evidence that the debt has become legally unenforceable since the issuance of the Decision and Order. *See Lawrence Syrovatka*, HUDOA No. 07-A-CH-HH10 (January 8, 2009); *Mortgage Capital of America, Inc.*, HUDBCA No. 04-D-NY-EEO32 (September 19, 2005); *Paul Dolman*, HUDBCA No. 99-A-NY-Y41 (November 4, 1999); *Anthony Mesker*, HUDBCA No. 94-C-CH-S379 (May 10, 1995); 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.) In addition, it is not the purpose of reconsideration to afford a party the opportunity to reassert contentions that have been fully considered and determined by the Court. *See Mortgage Capital of America, Inc.*, supra; *Louisiana Housing Finance Agency*, HUDBCA No. 02-D-CH-CC006 (March 1, 2004); *Charles Waltman*, HUDBCA No. 97-A-NY-W196 (September 21, 1999).

On April 11, 2012, the Secretary, through Counsel, filed a Supplemental Secretary’s Statement (“Supplemental Statement”) in response to the Order dated March 20, 2012. (Secretary’s Supplemental Statement (“Sec’y Supp. Stat.”), filed April 11, 2012.) The Secretary

argues that in this case “Petitioner has not provided sufficient documentary evidence to support her claimed \$85-\$100 expense for gasoline to travel 26 miles round-trip to work 5-6 times per week, totaling approximately 156 miles. (Sec’y Supp. Stat., ¶ 2.) Furthermore, in response to Petitioner’s claim that she should receive credit for the cost of her ignition interlock system, the Secretary notes that Petitioner’s monthly expense of \$135 per month for the device ceased in May 2012. (*Id.* at ¶ 3.) As a result, the Secretary asserts that “HUD is unable to determine whether Administrative Wage Garnishment authorized at 15% of Petitioner’s disposable pay would result in a financial hardship. (*Id.* at ¶ 4.)

On the other hand, Petitioner claims financial hardship, and more specifically claims that “several items were either incorrect in [sic] mis-interpreted [sic] by the Secretary.” (Pet’r’s Mot. for Recon.) As determined in the previous Decision, Petitioner was given credit for her monthly expenses in the following amounts: rent, utilities, phone, \$500.00; DUI fines/fees, \$85.00; car insurance, \$149.98; and home insurance, \$19.68. (Decision and Order.) Deductions were also accounted for: federal taxes, \$256.04; state taxes, \$55.26; Medicare, \$30.26; Social Security, \$88.42; and vision insurance, \$5.86. (*Id.*) For reconsideration Petitioner challenges the calculations of certain figures that were previously relied upon to determine her monthly expenses. She claims that if the figures were recalculated, the new figures would reflect an increase that would support her claim of financial hardship. (*Id.*) Petitioner also challenges the debt amount claimed to be owed and now claims that the amount owed is incorrect because proper credit was never given for the offset of her 2010 Federal Income Tax Refund on April 29, 2011 towards the remaining balance of her debt (*Id.*)

First, Petitioner asserts that the amount she owes for her DUI fines/fees is actually \$135.00 per month, which is \$60.00 more per month than the amount for which she received credit. (*Id.*) As support, Petitioner submitted a copy of her probation agreement with the Superior Court of Arizona. (Pet’r’s Doc. Evid.) This document, upon review, provides sufficient evidence of a repayment schedule for the fines and fees Petitioner incurred as a result of her DUI conviction. (*Id.*, Attach.) Condition #16 of the document states that Petitioner is responsible for paying a “Probation Service Fee” in the amount of \$65.00 per month, a surcharge of \$10.00 per month, a DUI Incarceration Cost of \$30.00 per month, plus two additional payments of \$15.00 per month. (*Id.*) The sum of these monthly charges total \$135.00. The evidence provided by Petitioner proves to be credible as newly discovered evidence and, accordingly, Petitioner’s monthly expense for DUI fines/fees will be adjusted to reflect the increased amount.

Second, Petitioner states that she has opted to enroll for additional health insurance benefits through her employer. Effective January 1, 2012, the increased amount for the insurance also increased the amount that Petitioner’s employer deducted from her bi-weekly income. (Pet’r’s Mot. for Recon.) Petitioner has filed, as evidence, a copy of a document from her employer that summarized the amounts deducted from her bi-weekly pay for various health insurance benefits. (*Id.*, Attach.) Again the evidence provided proved to be credible. The amounts deducted are as follows: Medical, \$61.60; Vision, \$5.87; Supplemental Life, \$7.10; Supplemental AD&D, \$1.29; Short-Term Disability, \$2.96; and Long-Term Disability, \$6.89. (*Id.*) These figures, combined, amount to a deduction of \$85.71 per pay period, or \$171.42 per month, so accordingly, Petitioner’s monthly credit for insurance benefits will also be adjusted to reflect the increased amount.

Third, Petitioner re-alleges her previous claim that the amount of the debt she owes to HUD should be adjusted to reflect the \$994.00 offset of her 2010 Federal Income Tax refund. (Pet'r's Mot. for Recon.) However, the figure Petitioner contests reflects the unpaid principal balance Petitioner owed *as of March 30, 2011*. (Secretary's Statement, ¶ 4.) The offset of Petitioner's federal tax refund occurred on April 29, 2011. (Petitioner's Documentary Evidence, ("Pet'r. Doc. Evid."), filed June 6, 2011, Attached Notice.) However, a determination cannot be made regarding the administrative offset of Petitioner's tax refund during a proceeding upon reconsideration of Petitioner's administrative wage garnishment. In order to collect Petitioner's delinquent debt to HUD, the Secretary is authorized to pursue debt collection remedies such as federal payment offset either separately or in conjunction with administrative wage garnishment. *See* 31 C.F.R. § 285.11(b)(4). So by regulation, HUD was authorized to offset the federal payment due Petitioner. But, as stated in the previous Decision, Petitioner is permitted, as an alternative, to file a separate request for review of her administrative offset pursuant to 24 C.F.R. § 17.69. (Decision and Order.) This proceeding is not the proper forum to address this matter.

Lastly, Petitioner reasserts that she should be given credit for the cost of her ignition interlock system. This matter has been already fully adjudicated. Petitioner will not receive credit for this amount as an essential monthly expense. (Decision and Order.) Even if the Court did find that the cost of this device was considered an essential monthly expense, the issue is moot at this point because Petitioner's monthly burden of \$135.00 for the device ended in May 2012. (*See* Pet'r's Mot. for Recon. (stating that "I MUST keep the device on until May 2012).)

After recalculating Petitioner's monthly expenses based upon the adjustments for the DUI fines/fees and additional health insurance costs, the Court finds that Petitioner now incurs allowable monthly expenses in the amount of \$804.66. Petitioner's allowable deductions increased to \$601.40 in order to reflect the increase in the amount withheld from her bi-weekly paycheck for her increased health insurance benefits. After recalculating expenses and allowable deductions from Petitioner's monthly disposable income of \$1,986.93, the remaining balance is \$580.87.¹ A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$207.83, with a positive balance of \$373.04 remaining that this Court considers to be an amount sufficient to cover any other miscellaneous Petitioner may incur on a monthly basis.

While Petitioner claims she should be given credit for monthly expenditures for food and gasoline, she has not provided for the Court's review any supporting documentary evidence that the Court could rely upon to substantiate these expenses. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." *Marie O. Gaylor*, HUDBCA No. 03-D-NY-AWG04 (February 7, 2003) (quoting *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

Although 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

¹ The amount subtracted from Petitioner's monthly gross pay reflects the upward adjustments made for Petitioner's monthly DUI fines and fees, as well as the increase in bi-weekly deductions for Petitioner's health insurance benefits.

garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship,” none of the factors identified by Petitioner represents a materially changed circumstance sufficient enough to permit the Court to review the amount of the garnishment imposed in this case. *See Jeffrey Wilson* (Ruling on Request for Reconsideration and Order), HUDOA No. 07-M-CH-AWG40 (August 4, 2008). Therefore, I find that Petitioner has failed to meet her burden of proof by establishing, by a preponderance of the evidence, that her circumstances have been materially changed, and that the Secretary’s proposed repayment schedule would create a financial hardship for Petitioner.

Petitioner’s remaining allegations will not be reconsidered by the Court because Petitioner is simply reasserting issues that already have been fully adjudicated and determined in the Court’s previous decision.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that the administrative wage garnishment order authorized by the Decision and Order, *Pamela Bowers*, HUDOA No. 11-H-CH-AWG84 (Oct. 28, 2011) **SHALL NOT BE MODIFIED** and shall remain in **FULL FORCE AND EFFECT**.

/o/original _____
Vanessa L. Hall
Administrative Judge