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

In the Matter of: **Pamela Bowers,** Petitioner	HUDOA No. 11-H-CH-AWG84 Claim No. 78-0576754-0B

Pamela Bowers
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Pro se

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For the Secretary

DECISION AND ORDER

On April 12, 2011, 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 as 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 April 14, 2011, 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 April 14, 2011.)

Background

On November 11, 1999, Petitioner executed and delivered a Note ("Note") to Windsor Capital Mortgage Corporation in the amount of $25,000 that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement ("Sec'y Stat.") ¶ 1, filed May 12, 2011; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶ 3, dated April 28, 2011.) Windsor Capital Mortgage Corporation assigned its interest in the Note to TMS Mortgage, Inc., which was succeeded in interest by Homeq Servicing Corporation. (Sec'y Stat. ¶ 1; Dillon Decl. ¶ 3.) In 2003, Homeq Servicing Corporation assigned its interest in the Note to Wells Fargo Bank Minnesota, National Association ("Wells Fargo") as Trustee under the Pooling and Servicing Agreement dated as of February 28, 2001. (Sec'y Stat. ¶ 1; Dillon Decl. ¶ 3.) After the Petitioner defaulted on the loan, Wells Fargo assigned the Note to the United States of America on May 14, 2003 under the regulations governing the Title I Insurance Program. (Sec'y Stat. ¶ 2; Dillon Decl. ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.) Petitioner is indebted to HUD on the Note in the following amounts:

(a) $12,945.71 as the unpaid principal balance as of March 30, 2011;
(b) $258.96 as the unpaid interest on the principal balance at 2% per annum through March 30, 2011; and
(c) interest on said principal balance from April 1, 2011, at 2% per annum until paid.

(Sec'y Stat. ¶ 4; Dillon Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated March 22, 2011 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. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 6.) As of April 28, 2011, Petitioner has not entered into such repayment agreement. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 6.)

Based on Petitioner's pay statement, administrative wage garnishment authorized at 15% of Petitioner's disposable pay would result in a bi-weekly repayment of $132.80. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7.) The Secretary's proposed repayment schedule is $132.80 bi-weekly, or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 8; Dillon Decl. ¶ 7.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), if Petitioner disputes the existence or amount of the debt the Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Petitioner objects to the proposed administrative wage garnishment based on financial hardship. (Pet'r's Hr'g Req., filed April 12, 2011.)

In support of her financial hardship claim, Petitioner provided copies of pay statements and proofs of payment for her monthly expenses. (Petitioner's Documentary Evidence ("Pet'r's Evid."), filed June 6, 2011.) Petitioner's bi-weekly pay statements for the pay periods between February 12, 2011 and April 24, 2011 indicate that Petitioner's average bi-weekly gross pay is $994.98, or $1,986.96 monthly. (*Id.*) 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, $256.04; state tax, $55.26; Medicare, $30.26; Social Security, $88.42; and vision insurance, $5.86, Petitioner is left with a monthly disposable income of $1,551.12.

The documentary evidence submitted by Petitioner for her essential monthly household expenses are: rent, utilities, phone, $500.00; DUI fines/fees, $85.00; car insurance, $149.98; and home insurance, $19.68. (Pet'r's Evid.) This Court did not, however, include cable because such expense was not considered an essential monthly expense. *E.g.*, *David K. Horr*, HUDOA No. 11-M-CH-AWG81, at 3 (July 20, 2011). Certain other expenses also were not credited toward Petitioner's household expenses because Petitioner did not submit sufficient documentary evidence to establish that the following household expenses are essential as a monthly expense: Petitioner's administrative offset deductions, $994.00; Petitioner's ignition interlock device, $81.58; and Petitioner's remaining balance on her previous apartment, $1,307.30. (Pet'r's Evid.) Therefore, Petitioner's combined expense for essential monthly household expenses total $729.66.

While Petitioner's administrative offset is not considered a recurring monthly expense, Petitioner is nevertheless permitted to file a separate request for review of her administrative offset pursuant to 24 C.F.R. § 17.152(a). Further, Petitioner's obligation on her outstanding rent payments for her previous apartment appears as a one-time expense, rather than a recurring monthly payment. (Pet't's Evid.) Finally, the record indicates that the ignition interlock device was to be installed for twelve months. (*Id.*) Petitioner's ignition interlock device was initially installed on August 31, 2010. (*Id.*) Since a year has elapsed since the installation date, Petitioner is no longer subject to a monthly expense for the device.

Petitioner's disposable income of $1,551.12 exceeds her monthly living expenses of $729.66 by $821.46. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of $232.67 per month and would leave Petitioner with a positive balance of $588.79, an amount sufficient to cover the remaining miscellaneous, non-essential expenses Petitioner incurs on a monthly basis. As a result, 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. Therefore, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

ORDER

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing stay of referral in this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative wage garnishment in the amount of 15% of Petitioner's disposable income.

Vanessa L. Hall
Administrative Judge

October 25, 2011