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

In the Matter of:

Victor Abraham,

Petitioner

HUDOA No. 11-H-CH-AWG93
Claim No. 780722960

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Pro se

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For the Secretary

DECISION AND ORDER

On May 3, 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 Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b).

The administrative judges of this Court 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 May 5, 2011, this Court 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, dated May 5, 2011.)

Background

On January 11, 2004, Petitioner executed a Property Improvement Note ("Note") under the provisions of the Title I insurance program. (Secretary's Statement ("Sec'y. Stat."), filed May 23, 2011, ¶ 2; Ex. 1, Note) After default by Petitioner, the Note was assigned to HUD by the Michigan State Housing Development Authority, under the regulations governing the Title I Insurance Program. (Sec'y Stat.; Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center within HUD ("Dillon Decl."), dated May 19, 2011, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner but has been unsuccessful. (Dillon Decl., ¶ 4.) The Secretary has filed a statement alleging that Petitioner is indebted to HUD on the Note in the following amounts:

(a) $21,996.55 as the unpaid principal balance as of April 30, 2011;
(b) $580.06 as the unpaid interest on the principal balance at 1% per annum through April 30, 2011;
(c) 1,346.90 as the unpaid penalties as of April 30, 2011;
(d) $35.33 as the unpaid administrative costs as of April 30, 2011; and
(e) interest on said principal balance from May 1, 2011 at 1% per annum until paid.

(Sec'y. Stat., ¶ 4; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent"), dated February 25, 2011, was sent to Petitioner.[1] (Sec'y. Stat., ¶ 5; Dillon Decl., ¶ 6.) 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 based on the Notice. (Sec'y. Stat., ¶ 6; Dillon Decl., ¶ 7.) "A Wage Garnishment Order, dated March 3, 2011, was issued to Petitioner's employer" and as of May 23, 2011, "there have been no garnishments credited to Petitioner's account." (Sec'y Stat., ¶ 7; Ex. 2, Dillon Decl., ¶ 8.).

The Secretary's proposed repayment schedule is $665.52 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable income. (Sec'y Stat. ¶ 8; Dillon Decl., ¶ 9.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule would cause him financial hardship. Petitioner does not contest the existence or amount of the debt claimed by the Secretary. (Petitioner's Hearing Request ("Petri's' Hr'g. Req."), filed May 3,

[1] Instead of the October 29, 2010 date noted in the Secretary's Statement for the Notice of Intent, the Court relied upon February 25, 2011 as the more accurate date for the Notice of Intent because this date was consistent with the date reflected on the actual Notice of Intent of record, and also consistent with the date identified in the Dillon Declaration cited as support by the Secretary in his Statement.

2011.) Rather, Petitioner claims that (1) he was not given 30 days after receipt of the Notice of Intent before his wages were garnished; and, (2) the garnishment has created an adverse financial circumstance for him.

Petitioner asserts that he was "never given the chance to submit the information prior to the wage garnishment as indicated in the letter." (Petitioner's 2nd Documentary Evidence ("Pet'r.'s July 19 Docs."), filed July 19, 2011.) Based upon the evidence provided by Petitioner, the Notice of Intent was issued on February 25, 2011, by Pioneer Credit Recovery, Inc. informed Petitioner that: "[I]f you pay your debt in full or enter into a repayment plan acceptable to the Federal Agency before 03/27/2011, a garnishment order will not be issued to your employer." (Notice of Intent, p. 1.) The Notice of Intent further stated, "a garnishment order would not be issued if a hearing request was received by Pioneer on or before March 18, 2011. (*Id.*, p. 2.)

Here, the Secretary acknowledges that a garnishment order was in fact issued on March 3, 2011, less than a week after the mailing date of the Notice of Intent. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 8.) However, the Secretary maintains that no garnishments had occurred as of May 23, 2011. (Sec'y Stat., § 7.) Upon reviewing the record, there is no evidence of record that shows that the premature issuance of the garnishment order resulted in injury to the Petitioner because there was no actual garnishment of Petitioner's income until after the deadlines referenced in the Notice of Intent had expired. 31 C.F.R. § 285.11(f)(4) allows a debtor 15 days from the date of the Notice of Intent to request a hearing. If a timely request is not filed, the Government must still wait an additional 15 days after the request deadline before initiating a garnishment proceeding, in accordance with 31 C.F.R. § 285.11(e)(1). In this case, Pioneer used these regulations to determine the March 18 and March 27 dates referenced in the Notice of Intent. Any garnishment occurring after March 27, 2011, would therefore be within the Government's right to pursue.

Petitioner's Hearing Request is dated April 30, 2011, more than a month after the Government could legally issue a garnishment order. (Pet'r.'s Hr'g. Req., p. 5.) Petitioner noted in his Hearing Request that no actual garnishment occurred prior to that time by stating that a garnishment "will create" hardship for my family, implying that such garnishment had not yet occurred. (*Id.*) Further, Petitioner's pay statement for the pay period of March 7 – March 20 does not reflect any wage garnishment deduction. (Pet'r.'s Hr'g. Req., p. 6.) The net salary of $2,361.51 on the March pay statement was also substantially similar to a payroll deposit of $2,069.28 that appeared on Petitioner's bank statement of April 8, 2011, again reflecting no garnishment reduction. (Pet'r.'s July 19 Docs.) Had a premature garnishment been issued, it would have been reflected either on Petitioner's pay statement or in the deposit amount. Because there is no evidence in the record that proves the garnishment order was in effect, I find that, while the premature issuance of the garnishment order may have been considered in violation of 31 C.F.R. § 285.11(e), this governmental act, alone, did not constitute an act that brought harm to Petitioner. As such, before Petitioner's wages were garnished, Petitioner was in effect extended the necessary 30-day notice as required after receipt of his Notice of Intent.

Petitioner next asserts that the Secretary's proposed monthly repayment schedule of $665.52 or 15% of Petitioners disposable income would create a financial hardship. (Pet'r.'s Hr'g. Req., p. 5.) Disposable income is defined as "that part of the debtor's compensation from

an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c).

Petitioner has provided substantial documentation in support of his argument, including a Consumer Debtor Financial Statement, pay statements, home loan and utility information, credit card payment history, and bank statements. Based on Petitioner's pay statement, Petitioner earns a gross bi-weekly income of $3,358.05 that is deducted by the following: federal income tax, $157.83; Medicare, 50.98; and Michigan state income tax, 124.18. The statement lists another deduction of $147.65, but the Court was unable to determine if that deduction was a health insurance premium, or an otherwise required deduction to be withheld by law, so that deduction was not included in the calculations. Petitioner is thus left with a net bi-weekly disposable income of $3,025.06. A garnishment of 15% of this income at $453.76, would leave Petitioner with a bi-weekly disposable income of $2,571.30, or $5,142.60 per month, before deducting the essential monthly living expenses.

For monthly expenses, Petitioner identifies: rent, $800; water, $254; electricity, $359; natural gas, $100; food, $1,000; housing subdivision fees, $100; garbage removal, $50; child care, $300; and insurance, $289.54. (Pet'r.'s Hr'g. Req., p. 10.) These expenses are supported by documentary evidence showing proofs of payment for each of these essential household expenses. Other expenses identified, such as gasoline and automobile repairs, cable television, out-of-pocket medical expenses, and student loan repayments, will not be credited towards Petitioner's monthly expenses because Petitioner failed to provide credible evidence to substantiate sufficiently these items as essential. After deducting these expenses, plus the proposed 15% garnishment of $453.76, Petitioner is left with a net income of $1,890.06, an amount deemed to be sufficient to cover any additional miscellaneous, non-essential expenses incurred by Petitioner on a monthly basis.

Upon a full review of the evidence presented by Petitioner, this Court has determined that an order for administrative wage garnishment of Petitioner's disposable income at the rate of 15% per pay period would not create a financial hardship for Petitioner. Therefore, I find that Petitioner has not met his burden of proof that, by a preponderance of the evidence, the garnishment of his wages would create a financial hardship, and, I further find that 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 that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of 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 seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's monthly disposable income.

Vanessa L. Hall
Administrative Judge

November 16, 2011