



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

In the Matter of:

Jacqueline Maclin,
Petitioner

HUDOA No. 11-H-NY-AWG20
Claim No. 721002959

Jacqueline Maclin
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Fredericksburg, VA 22408

Pro se

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For the Secretary

DECISION AND ORDER

On October 29, 2010, 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 October 29, 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 October 29, 2010.)

Background

On December 3, 1998, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$4,862.46, in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”), filed November 24, 2010, ¶ 2, Ex. A.) On or about October 17, 2005, the FHA insurance on Petitioner’s primary note was terminated when the lender informed the Secretary that the note was paid in full. (Sec’y Stat., ¶ 4.) Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note. (Sec’y Stat., ¶ 5.) However, Petitioner failed to make payment on the Note and, consequently, Petitioner’s debt to HUD is delinquent. (Sec’y Stat., ¶ 6.)

HUD has attempted to collect on the Note from Petitioner with no success. Petitioner remains indebted to HUD on the Note in the following amounts:

- (a) \$2,975.49 as the unpaid principal balance as of October 31, 2010;
- (b) \$9.92 as the unpaid interest on the principal balance at 4% per annum through October 31, 2010; and
- (c) interest on said principal balance from November 1, 2010, at 4% per annum until paid.

(Sec’y Stat., ¶ 7; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated November 18, 2010, ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated August 2, 2010, was sent to Petitioner. (Sec’y Stat., ¶ 8; 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. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 7.) As of November 18, 2010, Petitioner had not entered into a written repayment agreement. (Sec’y Stat., ¶ 9; Dillon Decl., ¶ 8.) A Wage Garnishment Order, dated September 2, 2010, was issued to Petitioner’s employer by the U.S. Department of the Treasury, Financial Management Service. (Sec’y Stat., ¶ 10; Dillon Decl., ¶ 9.) Based on the garnishment order, Petitioner’s wages were garnished in the amounts of \$766.21 on October 4, 2010 and \$766.21 on November 3, 2010. (Sec’y Stat., ¶ 11; Dillon Decl., ¶ 10.) Upon reviewing Petitioner’s pay stub for the pay period ending October 29, 2010, the Secretary proposes a repayment schedule of 15% of Petitioner’s disposable pay, calculated at \$769.96 monthly. (Sec’y Stat., ¶ 12; Dillon Decl., ¶ 11.)

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 October 29, 2010.)

Specifically, Petitioner states: "The amount of the debt does not allow me to pay mortgage, utilities, and buy food. My husband has a loss of income due to two strokes this year." (*Id.*) 31 C.F.R. § 285.11(f)(8)(ii) requires that Petitioner must show, by a preponderance of the evidence, that the terms of the proposed repayment schedule would cause a financial hardship. In support of her financial hardship claim, Petitioner only provided a copy of her monthly pay statement for the period ending October 29, 2010. The monthly pay statement, alone, is insufficient in establishing Petitioner's claim of financial hardship.

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). According to the Secretary, Petitioner's pay statement indicates her gross pay for the monthly pay period ending October 29, 2010 was \$6869.35 (Dillon Decl., ¶ 11, Ex. A.) After subtracting allowable deductions for state income tax (\$327.04), federal income tax (\$627.93), FICA (Medicare) (\$95.59), FICA (Social Security) (\$408.73), and her health insurance premium (\$276.95), Petitioner is left with monthly disposable pay of \$5133.11. The Secretary's proposed wage garnishment is 15% of Petitioner's disposable pay, calculated at \$769.97 monthly. The monthly disposable pay of \$5133.11, less the 15% garnishment of Petitioner's disposable pay of \$769.97, leaves Petitioner with a monthly balance of \$4363.14, an amount that reflects that the proposed monthly garnishment deduction is not likely to create a financial hardship for Petitioner.

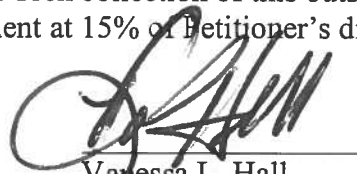
Petitioner was ordered on three occasions to file documentary evidence in support of her claim of financial hardship, but Petitioner has failed to comply with those Orders, except for her submission of the single pay statement, that was determined to be insufficient. (Notice of Docketing; Order, dated December 7, 2010; Order to Show Cause, dated January 25, 2011.) Without sufficient evidence from Petitioner beyond the single pay statement, I find that Petitioner's claim that the Secretary's proposed wage garnishment creates a financial hardship must fail for lack of proof.

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 pay.



Vanessa L. Hall
Administrative Judge

April 25, 2011