



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

In the Matter of:

Brenda L. Okoro,
Petitioner

HUDOA No. 11-H-NY-AWG26
Claim No. 780482326

Brenda L. Okoro
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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 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 November 16, 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 16, 2010.)

Background

On February 24, 1999, Petitioner executed and delivered a Note to Real Estate Mortgage Acceptance Co. in the amount of \$25,000.00, which 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.”), filed December 15, 2010, ¶ 2, Exh. A.) On March 15, 1999 the Note was assigned by Real Estate Mortgage Acceptance Co. to TMS Mortgage Inc., d/b/a The Money Store. (Id. at ¶ 3.) On September 4, 2001, the Note was assigned by Homeq Servicing Corporation (successor by merger to TMS Mortgage, Inc., d/b/a The Money Store) to Wells Fargo Bank Minnesota, who then assigned the Note to the United States of America. (Sec’y Stat., ¶ 5; Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center within HUD (“Porter Decl.”), dated December 15, 2010, ¶ 2.)

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) \$4,612.03 as the unpaid principal balance as of November 30, 2010;
- (b) \$172.98 as the unpaid interest on the principal balance at 5% per annum through November 30, 2010; and
- (c) interest on said principal balance from December 1, 2010, at 5% per annum until paid.

(Sec’y Stat., ¶ 6; Porter Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated August 25, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 7; Porter 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, but has declined to do so. (Sec’y Stat., ¶ 8; Porter Decl., ¶ 6.)

A Wage Garnishment Order dated September 27, 2010 was issued to Petitioner’s employer by the U.S. Department of the Treasury. (Supplement to Secretary’s Statement (Supp. Sec’y Stat.), filed June 10, 2011, Exh. A, Supplemental Declaration of Brian Dillon, (Dillon Supp. Decl.) Director, Asset Recovery Division, HUD Financial Operations Center, dated June 10, 2011, ¶ 3.) Petitioner’s employer confirmed that Petitioner’s wages were garnished in the amount of \$463.37 during October, November, and December 2010. (Id. at ¶ 4; Dillon Supp. Decl., ¶ 4.) Petitioner’s employer sent these garnishments to the wrong address. (Id.) The U.S. Department of Treasury is in the process of trying to locate and post these payments to Petitioner’s account. (Id.) Since the foregoing payments have not yet been received by HUD, they are not reflected in the balance due. (Id. at ¶ 5.)

As a result, the Secretary proposes a repayment schedule of \$249.84 per month, or 15% of Petitioner’s disposable income. (Sec’y Stat., ¶ 9, Porter Decl., ¶ 7.)

Discussion

Petitioner challenges the collection of the alleged debt on the grounds that the administrative wage garnishment, as claimed by the Secretary, will create a financial hardship for Petitioner. (Petitioner's Hearing Request ("Pet'r's Hr'g. Req."), filed November 16, 2010.) Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that the terms of the proposed repayment schedule would create a financial hardship.

In this case, Petitioner claims that, "[S]ince my wages have been garnished, I have been having financial difficulties. Actually, I was having financial difficulties before the garnishments. It has only made matters worse." (Petitioner's Letter, filed February 14, 2011.) In support of her financial hardship claim, Petitioner provided a copy of her Financial Statement of Debtor, copies of pay statements, cancelled checks, and copies of proofs of payment in support of her alleged monthly expenses.

In administrative wage garnishment cases, the Secretary is authorized to garnish up to 15% of a debtor's disposable income 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). On Petitioner's Financial Statement of Debtor, her gross salary is listed as \$45,000 per year with a monthly net income of \$2,300 per month. However, Petitioner's pay statements indicate that her gross annual income for the year ending January 31, 2011 was actually \$50,560.04, or \$4,213.34 per month. After subtracting the allowable deductions for federal income tax withholding (\$182.54 monthly average); state tax withholding (\$152.78 monthly average); social security (\$235.00 monthly average); Medicare (\$56.49 monthly average); health insurance (\$259.28 monthly average); dental insurance (\$52.04 monthly average); and vision insurance (\$6.27 monthly average), Petitioner is left with a monthly average of \$3,268.94 in disposable income.

Petitioner also submitted documentary evidence, along with proofs of payment, of the following bills as essential monthly household expenses: \$78.50 (Hospital Insurance Bill); \$100.00 (Student Loan); \$ 213.14 (Washington Gas & Light); \$ 133.00 (Extended Day Care); \$50.00 (Medical Expenses); \$ 140.84 (Car Insurance); \$ 250.00 (Grocery); \$ 185.00 (Phone); \$ 25.00 (Credit Card Payments); \$ 68.03 (Heating); \$ 35.00 (Home Security); \$ 144.00 (American Gen'l Loan); \$ 100.41 (Cable); \$ 28.00 (Bug Spray Extermination); \$74.00 (Furniture Loan); and \$66.00 (Child's Dance Class). (Petitioner's Letter, dated February 14, 2011, Attachments.) Petitioner's monthly expenses for \$100.41 for cable, \$74.00 for a furniture loan, \$28.00 for bug spray extermination, and \$66.00 for her child's dance class, were not credited towards Petitioner's essential monthly expenses because these expenses were not considered essential living expenses. Thus, Petitioner's essential household expenses total \$1,373.01 monthly.

Petitioner's monthly disposable income of \$3,268.94, less her essential household expenses of \$1,373.01, results in a remaining balance of \$1895.93 per month. A 15% garnishment rate of Petitioner's monthly disposable income, as proposed by the Secretary, would equal \$284.38, and result in a monthly balance of \$1,611.55 per month for miscellaneous

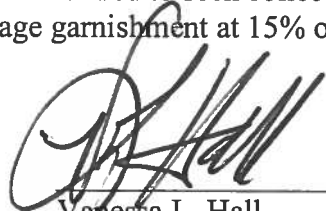
monthly expenses. Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it. However, based upon the evidence presented by Petitioner, an order for administrative wage garnishment of Petitioner's disposable income at the rate of 15% would not create a financial hardship, and further, would not affect Petitioner's ability to meet the monthly expenses that routinely cover her basic household needs. Therefore, I find that Petitioner has not successfully proven, by a preponderance of the evidence, her claim of financial hardship, and as such, Petitioner remains legally obligated to pay the alleged debt.

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

June 20, 2011