

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

In the Matter of:

Khampheng Phabmixay,

Petitioner.

Case No. 11-M-CH-AWG106

Claim No. 721000314

February 27, 2013

DECISION, RULING, AND ORDER UPON RECONSIDERATION

On October 18, 2011, this Court issued a *Decision and Order* in which it found that Petitioner Khampheng Phabmixay ("Petitioner") did not file any documentary evidence in support of his claim of financial hardship. *In re Khampheng Phabmixay*, HUDOA No. 11-M-CH-AWG106 (October 18, 2011). Consequently, the Court ruled that the subject debt was due and payable, and that the Secretary of the U.S. Department of Housing and Urban Development was authorized to seek administrative wage garnishment of up to 15% of Petitioner's disposable wages to satisfy the debt. *Id.*, at 4.

On August 2, 2012, Petitioner filed a *Motion to Reopen*, stating that "[d]ue to our incomes changed (sic) when my wife VTB benefits ran out on 5/12/12 we are now in need of [r]educing our garnishment to amount to lower amount (sic)." In response, the Court ordered Petitioner to file evidence that the wage garnishment would cause a financial hardship. Ruling and Order upon Reopening ("August 9 Order"), issued August 9, 2012. The *August 9 Order* stated that the evidence "must consist of proof of actual payment of necessary household expenses, including pay statements, other statements of income, cancelled checks, bank statements, paid bills, and other documents demonstrating proof of payment of necessary household expenses." *Id.*

Petitioner timely complied with the August 9 Order, and filed copies of a mortgage check and a bank statement to support his claim of financial hardship. Petitioner's Documentary Evidence ("Pet'r's Doc. Evid."), filed September 5, 2012. With no objection from the Secretary, the Court granted Petitioner's *Motion to Reopen* for the limited purpose of determining Petitioner's financial hardship. Ruling and Order to File Documentary Evidence, issued November 19, 2012.

Discussion

HUD regulations state that a debtor whose wages are subject to a wage withholding order may, at any time, request a review of the garnishment based on materially changed circumstances. 31 C.F.R. § 285.11(k). Petitioner contends that the expiration of his wife's

unemployment benefits constitutes a changed circumstance that warrants adjustment of the garnishment amount. Motion to Reopen, p. 1.

In support of this argument, Petitioner has filed a Consumer Debtor Financial Statement ("CDFFS") listing the following monthly expenses: mortgage payment, \$3,561; gasoline, \$400; electricity, \$130; food, \$500; cable television, \$100; medical expenses, \$50; clothing, \$50; car insurance, \$89. Petitioner also submitted a recent pay statement, a copy of his August 2012 bank transactions, a copy of his mortgage bill, and a copy of a check for his August 2012 mortgage payment.

Petitioner's copy of a July 2012 mortgage bill shows his monthly mortgage payment to be \$3,561, the same amount he identified on the CDFFS. However, the check Petitioner submitted as evidence of his August mortgage payment only shows a payment of \$1,792.38, slightly more than half the amount shown on the mortgage bill. (Petitioner's Documentary Evidence "Pet'r. Doc. Ev.", p. 2). A payment notice attached to the check indicates that the amount is Petitioner's trial period mortgage payment amount. Petitioner has provided no further elaboration about this discrepancy. The Court is therefore unable to determine the length of the trial period, or the amount of mortgage due per month once the trial period expires. As a result, the Court can only confirm that Petitioner pays \$1,792.38 per month in mortgage, not the \$3,561 asserted on the CDFFS.

Similarly, the CDFFS states that Petitioner pays \$89 per month for car insurance. (CDFFS, p. 4). However, Petitioner's bank statement shows a car insurance payment to Geico for \$42.17. (Pet'r. Doc. Ev., p. 4). Petitioner did not submit a copy of an actual bill. The Court therefore cannot determine what relationship the \$42.17 payment has to Petitioner's overall car insurance bill. Petitioner has only proven that he pays \$42.17 per month for car insurance, not \$89. Accordingly, the Court can only credit the former amount as an essential monthly expense.

Petitioner has also not included copies of receipts, bills, or checks substantiating the other expenses listed on the CDFFS, including electricity, water, life insurance, and telephone. Rather, he has filed a bank statement showing various ATM, check, and debit card transactions. Petitioner has hand-written explanations for many of these transactions in the margins of the bank statement, asserting that they are for the above-mentioned expenses. To the degree the Court can infer with confidence that the explanations are accurate, those purchases will be credited if appropriate. For example, the bank statement shows a purchase of \$11.10 from Oriental Food Market on August 24, 2012. Petitioner labels this purchase "food." This purchase will be credited. However, there is a \$20.00 ATM withdrawal on August 27, 2012, that is also labeled "food." This purchase is not creditable, because the Court cannot infer that this withdrawal was in fact used to purchase food. Using this method, the Court can reasonably infer that Petitioner's monthly expense for food and gas are \$577.45 and \$290.93, respectively.

The expenses for electricity, water, and life insurance cannot be credited because the bank statement only shows check withdrawals that Petitioner labeled as having been used to pay these expenses. Since there are no copies of the bills or the checks the Court is unable to infer that these checks were in fact used to pay these expenses. Similarly, Petitioner labeled a \$100.00 ATM withdrawal "phone & cable." The Court cannot credit this amount for a telephone expense

because the Court cannot reasonably infer that any of this amount was in fact used to pay a telephone bill. In addition, the Court does not credit amounts for cable and internet, so Petitioner's withdrawals labeled for those expenses will not be credited. In sum, the Court finds the Petitioner's total monthly expenses to equal \$2,702.93.

Petitioner's pay statement shows a net bi-weekly pay of \$1,240.27. However, the bi-weekly disposable pay for wage garnishment purposes is \$1,371.52. Disposable pay is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay. For purposes of calculating disposable pay for a wage garnishment, amounts required by law to be withheld includes deductions for social security and withholding taxes, but does not include any amount withheld pursuant to a court order. 31 C.F.R. § 285.11(c). Using Petitioner's submitted pay statement, the Court subtracted withholding taxes, social security taxes, health insurance, dental insurance, and vision insurance from Petitioner's gross pay. The Court did not subtract voluntary retirement contributions, supplemental life insurance, union dues, or a tax garnishment from his gross pay. Petitioner therefore has \$2,743.04 in monthly disposable income. Petitioner also states that he receives \$1,100 per month in rent from his son. Petitioner's household income therefore totals \$3,843.04. A 15% garnishment of this amount equals \$576.46, thereby leaving him with \$563.65. I find that this amount is sufficient to allow Petitioner to meet his other monthly expenses, even in light of his wife's current unemployment.

ORDER

For the reasons set forth above, it is hereby **ORDERED** that the administrative wage garnishment order authorized by the October 18, 2011, *Decision and Order* **SHALL NOT BE MODIFIED** and **SHALL REMAIN IN FULL FORCE AND EFFECT**.



H. Alexander Manuel
Administrative Judge