



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

In the Matter of:

Melissa A. Lamantia,
Petitioner

HUDOA No. 11-M-CH-AWG12
Claim No. 780716707

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Pro Se

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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 are designated to determine whether the Secretary may collect the alleged debt in this case by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. §285.11, as authorized by 24 C.F.R. §17.170. The Secretary has the initial burden of proving the existence and amount of debt in this case. 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 any repayment schedule proposed by the Secretary are unlawful, would cause 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. §284.11(f)(4), on October 20, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On April 16, 2006, Petitioner executed a Home Improvement Installment Contract and Promissory Note, (“Note”) to finance repairs to her home. (Secretary’s Statement (“Sec’y Stat.”), filed November 16, 2010, ¶ 1.) The Petitioner defaulted on the Note, and the Note was assigned to the Secretary pursuant to the provisions of the Title 1 Insurance Program. (Sec’y Stat., ¶ 2.) The Secretary now claims that the debt is due but Petitioner has failed to make payments. (Sec’y Stat., ¶ 3.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. (Sec’y Stat., ¶ 3.) On June 18, 2010, a Wage Garnishment Order was issued to Petitioner’s employer. (Sec’y Stat., ¶ 7.) Based on the issuance of the garnishment order, Petitioner’s pay has been garnished seven times, totaling \$817.28. (Sec’y Stat., ¶ 8, Ex. 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated November 16, 2010, ¶ 8.) The Secretary alleges that Petitioner is now indebted to HUD in the following amounts:

- (a) \$2, 742.88 as the unpaid principal balance as of October 31, 2010;
- (b) \$6.86 as the unpaid interest on the principal balanced at 4% per annum through October 31, 2010; and
- (c) interest on said principal balance from November 1, 2010 at 3% per annum until paid.

(Sec’y Stat., ¶ 4, Ex. 2; Dillon Decl., ¶ 4.)

On or about May 19, 2010, a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to Petitioner. (Sec’y Stat., ¶ 5.) Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, but declined to do so. (Sec’y Stat., ¶ 6.) The Secretary’s proposed repayment schedule is 15% of Petitioner’s disposable income, or \$126.50 on a bi-weekly basis. (*Id.*; Sautter Decl., ¶ 10.)

Discussion

Petitioner does not dispute the existence or the amount of the debt. Rather, Petitioner asserts that the debt that is the subject of this proceeding may not be collected because the proposed administrative wage garnishment would cause financial hardship. Petitioner requests a reduction in garnishment.

Petitioner states that the administrative wage garnishment would cause financial hardship. Petitioner states, “My husband lost his unemployment benefits after being laid off for two years, [I am] only scheduled to work four days a pay period I am working more now because

of workers being on sick leave...[Petitioner] also has another garnishment being taken on top of yours..." (Petitioner's Documentary Evidence ("Pet'r Evid."), filed January 18, 2011.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule are unlawful or would cause a financial hardship. On January 18, 2011, Petitioner filed a letter and financial statements that included copies of Petitioner's bills and payments, receipts, and bi-weekly pay statements. (Pet'r Evid.)

Petitioner submitted her bi-weekly pay statement for the pay period ending December 31, 2010, indicating that her bi-weekly gross pay was \$927.06. (Pet'r Evid.) 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...[including] amounts for deductions such as social security taxes and withholding taxes..." (31 C.F.R. §§ 285.11(c)(i)(2)(i)(A)). After subtracting allowable deductions for: Federal Tax, \$25.77; Social Security, \$57.48; Medicare, \$13.44; State Tax, \$19.81; and Town Tax, \$18.54, Petitioner is left with a disposable income of \$792.02 bi-weekly or \$1584.04 monthly for the purposes of wage garnishment. (Pet'r Evid.)

Petitioner claims a total of "fixed monthly expenses" of \$1,912, which are somewhat substantiated by her receipts and bills. (Pet'r Evid.) Petitioner submits a monthly bill for internet and cable, \$153.07. This is not deemed to be an essential living expense by this Office and is excluded from the calculation of Petitioner's essential household expenses. *See Richard Johnican*, HUDOA No. 09-H-CH-AWG07 (February 9, 2009).

Petitioner lists other monthly bills- for which actual bills or receipts of payment were not submitted. They include: "Mortgage", \$518.17, "Gas", \$140.00, "Electricity", \$101.29, "Water", \$43.91, "Sewer", \$58.75, and "Food", \$500. This Office has determined that credit may be given for certain essential household expenses, such as rent and food, where Petitioner has not provided bills or other documentation, yet the "financial information submitted by Petitioner...[was found to be] generally credible..." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (citing *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Certain expenses are not "deemed by this Office to be basic subsidies for living expenses and thus would require Petitioner to submit documentary evidence to substantiate said expenses." *Manuel J. Simental*, HUDOA No. 08-H-CH-AWG53 (November 26, 2008) (citing *Brenda Husband*, HUDOA No. 07-L-CH-AWG31 (February 14, 2008)).

In accordance with the holding in *Herring* and *Loera*, this Office will credit Petitioner with the following monthly expenses: mortgage, \$518.17; gas, \$140; electricity, \$101.29; water, \$43.91; sewer, \$58.75; and food, \$500.

Petitioner submitted bills and receipts showing acceptable household expenses for: auto loan, \$125.00. Petitioner also included medical bills for consideration, which show a total of \$557.56, which amounts to \$46.46 when divided by 12 months. Although Petitioner lists a monthly auto insurance expense of \$90, the receipts submitted by Petitioner for 6 months of coverage show a total of \$373.46, which amounts to \$31.12 per month when divided by 12

months. Accordingly, this Office finds that Petitioner's monthly household expenses total \$1,564.70.

Petitioner's monthly disposable income of \$1,584.04 less her household expenses of \$1,564.70 leaves petitioner with a balance of \$19.34. A 15% garnishment rate of Petitioner's monthly disposable income would result in a garnishment amount of approximately \$237.61 per month and would leave Petitioner with a negative balance of \$-218.27. A 10% garnishment rate would lower Petitioner's garnishment amount to approximately \$158.40 per month but would leave Petitioner with a negative balance of \$-139.06. A 5% garnishment rate would lower Petitioner's payments to \$79.20 per month but would leave a negative balance of \$-59.86.

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, particularly in cases where financial hardship is found. Upon due consideration, this Office finds that Petitioner has submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount sought by the secretary, would cause financial hardship.

While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable pay would constitute a severe financial hardship sufficient to justify suspension of a collection action at this time.

ORDER

For the reasons set forth above, I find that Petitioner has submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable pay, in the amount sought by the Secretary, would cause severe financial hardship. The Order imposing the stay of the referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

The Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or her expenses for necessities are reduced.



H. Alexander Manuel
Administrative Judge

February 16, 2011