



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

In the Matter of:

Lydia Starr,
Petitioner

HUDOA No. 11-M-CH-AWG138
Claim No. 78-0675135-0A

Lydia Starr
114 Canyon Road
Clifton, AZ 85533

Pro se

Amy Jo Conroy, Esq.
US Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

Counsel for the Secretary

DECISION AND ORDER

On August 30, 2011, Petitioner requested a hearing concerning a proposed administrative wage garnishment to collect a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "Government"). 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 HUD Secretary has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case 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. Pursuant to 31 C.F.R. § 285.11(f)(10)(ii), HUD is required to suspend any wage withholding order issued prior to the 61st day after receipt of the hearing request and continuing until a written decision has been rendered.

Background

On or about March 7, 1997, Petitioner executed and delivered a Note to Sun Valley Developing in the principal amount of \$8,000.00 for a home improvement loan. (Secretary's Statement ("Sec'y Stat."), filed September 13, 2011, ¶ 2; Ex. 1, Note.) The Note was subsequently assigned to Statewide Mortgage Company. (Sec'y Stat.; Ex. 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated September 12, 2011, ¶ 3.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 3.)

Petitioner failed to make payment on the Note as agreed. (*Id.* at ¶ 4.) Consequently, Statewide Mortgage Company assigned the Note to the United States of America under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 5; Ex. 1, p. 3; Dillon Decl., ¶ 3.)

HUD's attempts to collect the alleged debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$5,695.91 as the unpaid principal balance as of August 31, 2011;
- (b) \$898.06 as the unpaid interest on the principal balance at 2% per annum through August 31, 2011;
- (c) \$1,014.38 as the unpaid penalties and administrative costs through August 31, 2011; and
- (d) interest on said principal balance from September 1, 2011, at 2% per annum until paid.

(Sec'y Stat., ¶ 8; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated February 8, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 6; Dillon 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. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) To date, Petitioner has not entered into such an agreement. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.)

A Wage Garnishment Order was issued to Petitioner's employer on March 8, 2011. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 7.) As of August 13, 2011, HUD has garnished Petitioner's wages 10 times, for a total of \$1,108.71. (Dillon Decl., ¶ 7.)

The Secretary suggests a proposed repayment of \$109.45 bi-weekly, which constitutes 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 9.)

Discussion

The Secretary has the initial burden of proving the existence and amount of the debt that is the subject of 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 or unenforceable. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of any proposed 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.*

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including the sworn testimony of the Director of HUD's Asset Recovery Division, a copy of the Note, and a copy of the Note's assignment to HUD, setting forth substantial evidence of Petitioner's debt to HUD. (*See Sec'y Stat.*)

Petitioner does not dispute the existence or enforceability of the debt. Rather, she asserts that a garnishment in the amount requested by the Secretary will create a significant financial hardship. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed August 30, 2011.)

Petitioner has provided substantial documentary evidence of her current financial situation, including a Consumer Debtor Financial Statement, pay statements, and a copy of her 2010 Federal Income Tax Return. (*See Pet'r's Hr'g Req.*)

Petitioner's 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). Based on Petitioner's documentary evidence, her average bi-weekly gross salary is \$1,088.80. (*Id.*) The following deductions are taken from Petitioner's salary: medical/dental insurance, \$90.58; federal income tax, \$55.71; social security, \$41.28; Medicare, \$14.25; Arizona state income tax, \$31.02; Arizona state retirement, \$121.18; Arizona state retirement LTD, \$2.83. Petitioner thus claims a net disposable bi-weekly income of \$731.95, or a monthly income of \$1,463.90. The Secretary seeks to garnish 15% of this income, or \$109.80 per pay period.

Petitioner also claims essential household expenses in the following amounts: food, \$350; car payment, \$319.26; electricity, \$180; telephone, \$135; gas, \$125; and medical expenses. (Pet'r's Hr'g Req.) Additionally, Petitioner states that she expends \$300 per month transporting her daughter to Tucson twice a month for ongoing cancer treatments, and \$50 purchasing her daughter's medications. (*Id.*)

As evidentiary support for these claimed expenses, Petitioner offers copies of utility bills, a letter from her daughter's treatment center verifying her medical condition, a mapquest.com printout showing the distance from Petitioner's home to the treatment center, pay statements, medical billing records, and various HUD-created financial statement worksheets. (*Id.*) Petitioner, however, has not provided evidence substantiating her claimed expenses for food or her car payment. She also has not offered evidence showing the actual travel costs associated with her bi-weekly trips to Tucson.

This Court has previously held that credit may be given for certain essential household expenses, despite insufficient documentation, when the "financial information submitted by

Petitioner ... [was found to be] generally credible....” *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). Despite Petitioner’s failure to include the aforementioned evidence, the other evidence she has filed shows a diligent, good-faith attempt to meet her evidentiary burden. Moreover, the costs Petitioner claims for food and her car payment are consistent with traditional price and consumption patterns. Petitioner will therefore be given full credit for these expenses, as well as for her \$50 medication costs.

Although Petitioner has offered evidence confirming the amount of her other utility bills, the bills appear to be somewhat less than what Petitioner initially claimed. Specifically, Petitioner’s water and electricity bill shows a monthly cost of \$151.84, rather than the \$180 Petitioner identified in the Consumer Debtor Statement. (See Pet’r’s Doc. Evid., p. 30.) Similarly, Petitioner claims a natural gas bill of \$125, yet the bill she filed shows a usage charge of only \$26.29, with another \$63.30 as an overdue balance. (*Id.* at p. 31.) Also, Petitioner states that she pays \$135 per month for telephone service. In fact, this bill encompasses telephone, cable television, and internet service. (*Id.* at p. 32.) This Court does not consider cable or internet to be essential household expenses, and so will credit only the \$70.72 that is attributable to the telephone service. See *Charles R. Chumley*, HUDOA No. 09-M-CH-AWG09 (April 6, 2009).

Petitioner also claims monthly payments of \$920.34 for assorted medical fees. (Pet’r’s Hr’g Req., p. 22.) The Court will not credit these costs, as the medical procedures that spawned them were not recurring events. Finally, Petitioner claims a \$112.87 monthly payment for a Harley Davidson motorcycle. (Pet’r’s Hr’g Req., p. 18.) This expense will also not be credited because a motorcycle is not considered an essential household item, especially when Petitioner has other means of transportation available to her.

In total, Petitioner claims creditable monthly expenses of \$1,268.11. Deducting this amount from her net salary of \$1,463.90 leaves her with a monthly disposable income of \$195.79. The proposed 15% garnishment of Petitioner’s salary — \$216.90 per month — would therefore leave Petitioner with a negative balance.

Petitioner next states that she and her husband filed for Chapter 7 bankruptcy protection in “2006-2007.” (Pet’r’s Hr’g Req., p. 1.) As evidence of this bankruptcy, she has filed a copy of a Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines from the U.S. Bankruptcy Court in the District of Arizona. (*Id.* at p. 4.) Petitioner, however, does not contend that the bankruptcy discharged her HUD debt.

The Secretary argues that the HUD debt was unaffected by Petitioner’s bankruptcy. (Sec’y Stat., ¶ 13; Dillon Decl., ¶ 9.) In support of this assertion, the Secretary filed a copy of a Reaffirmation Agreement signed by Petitioner in May 2007, in which she “agrees to reaffirm the indebtedness” to HUD. (Sec’y Stat.; Ex. A.) The Agreement stands as conclusive evidence that Petitioner’s debt remained actionable despite the bankruptcy proceeding.

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.

However, it is my determination that any garnishment of Petitioner's salary will cause her severe financial hardship.

ORDER

For the reasons stated above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place **INDEFINITELY**. It is hereby

ORDERED that the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at this time.

However, the Secretary shall not be prejudiced from re-filing this action in the future if Petitioner's income increases or Petitioner's expenses are mitigated.



H. Alexander Manuel
Administrative Judge

March 21, 2012