



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

In the Matter of:

Joan Jean-Baptiste,

Petitioner

HUDOA No. 11-M-NY-AWG06
Claim No. 787078647

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Pro Se

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DECISION AND ORDER

On October 19, 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. 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 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 a 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) and (f)(10), on October 20, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision.

Background

On May 23, 2006, Petitioner executed and delivered a Note to Domestic Bank in the amount of \$16,285.00, 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 November 3, 2010, ¶ 2, Ex. A.)

Petitioner failed to make payment on the Note as agreed. (*Id.* at ¶ 3.) Consequently, in accordance with 24 C.F.R. § 201.54, on December 17, 2008, Domestic Bank assigned the Note to the United States of America. (*Id.*, Ex. B.) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*, Ex. B.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$15,915.53 as the unpaid principal balance as of October 30, 2010;
- (b) \$1,556.99 as the unpaid interest on the principal balance at 4% per annum through October 30, 2010;
- (c) \$2,213.41 as the unpaid penalties and administrative costs as of October 30, 2010; and
- (d) interest on said principal balance from October 31, 2010 at 3% per annum until paid.

(*Id.*; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated November 1, 2010, ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated August 17, 2010 was sent to Petitioner. (Sec'y Stat., ¶ 5; 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 with HUD under mutually agreeable terms. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.) As of November 1, 2010, Petitioner has not entered into a written repayment agreement in response to the Notice. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 6.)

Petitioner has not responded to the Secretary's request to provide proof of income. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 7.) Accordingly, the Secretary submits that a reasonable amount to garnish is \$550.00 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 7.)

Discussion

Petitioner asserts that the debt that is the subject of this proceeding may not be collected because (1) Petitioner does not owe the full amount of the debt, and (2) the proposed administrative wage garnishment would cause Petitioner financial hardship. (3) Alternatively, Petitioner requests a payment plan of \$225.00 per month for 18 months.

First, Petitioner asserts that she does not owe the full amount of the debt. Petitioner states, "I do not feel that the amount demanded reflects the payments that were made prior to this matter being turned over to collections. The amount should be lower." (Petitioner's Request for a Hearing ("Pet'r Hr'g Req."), filed October 19, 2010.) Petitioner, however, has not produced any documentary evidence to prove her assertion that she does not owe the full amount of the debt, and, therefore, has not met her burden of proof. The Secretary, on the other hand, met his burden of proof to show the amount of the debt by filing his Statement, signed affidavit from Mr. Dillon and a copy of the Note, all reflecting the amount of the debt alleged in this case.

Second, Petitioner asserts that the proposed administrative wage garnishment would result in financial hardship. Petitioner states, "I am attaching evidence in support of my position that the proposed repayment schedule submitted by HUD would cause a financial hardship that would significantly and dramatically diminish my financial ability to sustain my home, ability to travel to my place of employment, and to take care of even my most basic personal day-to-day living needs." (Petitioner's Documentary Evidence ("Pet'r Evid."), filed December 6, 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 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 December 6, 2010, Petitioner filed an affidavit and financial statements that included copies of Petitioner's bills and payments, receipts, and bi-weekly pay statements. (*Id.*)

Petitioner's three most recent bi-weekly pay statements for the pay periods from October 16, 2010 to October 31, 2010, from November 1, 2010 to November 15, 2010, and from November 16, 2010 to November 30, 2010 indicate that her bi-weekly gross pay was \$1,669.84. (*Id.*) 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 income, Social Security, Medicare, state income and state SUI/SDI taxes, Petitioner is left with a disposable income of \$1,394.97 bi-weekly or \$2,789.94 monthly. (*Id.*)

The documentary evidence submitted by Petitioner shows records of payment for the following essential household expenses for which this office will credit Petitioner: mortgage, \$1,041.92 monthly average; car payment, \$457.51 monthly; and water, \$50.00 monthly average. Petitioner's claim regarding ground service of \$60.00 is not credited by this Office because Petitioner has not submitted sufficient documentary evidence to establish that the payment is an essential monthly household expense.

Even though Petitioner failed to file documentary evidence to support her claimed expenses for food and telephone, 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, 2009) (*citing Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In accordance with the holding in *Herring* and *Loera*, this Office will credit Petitioner with her monthly expenses alleged in her Debt Resolution Program Financial Statement, namely food, \$75.00, and telephone, \$60.00. (Pet’r Evid.)

These essential household expenses total \$1,684.43 monthly. As a result, Petitioner’s monthly disposable income of \$2,789.94 less her monthly bills and expenses of \$1,684.43 leaves a remaining balance of \$1,105.51 per month.

A 15% garnishment rate of Petitioner’s monthly disposable pay, as proposed by the Secretary, would equal \$418.49, and leave Petitioner with a \$687.02 balance per month. The balance would still enable Petitioner to meet her essential household expenses. Therefore, I find that an order for administrative wage garnishment of Petitioner’s disposable income at a rate of 15% would not create a financial hardship for Petitioner within the meaning of 31 C.F.R. § 285.11(f)(8)(ii).

Finally, Petitioner requests a payment plan of \$225.00 per month for 18 months. (Pet’r Evid.) Petitioner is advised that this Office is not authorized to consider any settlement offer or any waiver of interest request on behalf of HUD. However, Petitioner may wish to discuss this matter with Counsel for the Secretary or Mr. Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. For the reasons stated above, it is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner’s monthly disposable pay.



H. Alexander Manuel
Administrative Judge

February 3, 2011