



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

In the Matter of:

GLADYS PERRY,
Petitioner

HUDOA No. 11-M-NY-AWG148
Claim No. 721004626

Gladys Perry
7462 Parkview Drive
Columbia, SC 29223

Pro Se

Julia M. Murray, Esq.
U.S. Department of Housing and
Urban Development
Office of the Regional Counsel
for New York/New Jersey
26 Federal Plaza, Room 3237
New York, New York 10278

For the Secretary

DECISION AND ORDER

On September 30, 2010, Gladys Perry ("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 by means of administrative wage garnishment if 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 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 September 28, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

BACKGROUND

On or about September 11, 1998, the HUD-insured loan on Petitioner's home was in default, and Petitioner was threatened with foreclosure. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed October 18, 2011.) As a means of providing foreclosure relief, HUD advanced funds to the FHA insured lender to bring Petitioner's mortgage current. (Sec'y Stat. ¶ 3; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl.") ¶4, dated October 14, 2011.) The Note cited specific events that would make the debt become due and payable. One of those events was if Petitioner paid all amounts due under the primary note and related mortgage insurance by the Secretary. (Sec'y Stat. ¶5; Dillon Decl. ¶4.) On or about June 18, 2004, the FHA insurance on the primary mortgage was terminated, as the lender indicated that the mortgage had been paid in full. (Sec'y Stat. ¶6; Dillon Decl. ¶4.)

The Secretary has made efforts to collect the debt from Petitioner, but Petitioner remains in default. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 5.) Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$2,943.95 as the unpaid principal balance as of September 30, 2011;
- (b) \$29.43 as the unpaid interest on the principal balance at 4% per annum through September 30, 2011;
- (c) \$247.12 as unpaid penalties and administrative costs; and
- (d) Interest on said principal balance from October 1, 2011 at 4% per annum until paid.

(Sec'y Stat. ¶ 9 ; Dillon Decl. ¶ 5.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated July 15, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 10; Dillon Decl. ¶ 6.) 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. ¶ 11; Dillon Decl. ¶ 7.) A Wage Garnishment Withholding Order was issued to Petitioner's employer on August 16, 2011. (Sec'y Stat. ¶ 12; Dillon Decl. ¶ 8.)

Based on a review of Petitioner's weekly pay statement for the period ending August 20, 2011, the Secretary, after accounting for allowable deductions, proposes a weekly repayment schedule of \$49.03 or 15% of Petitioner's disposable pay. (Sec'y Stat. ¶ 14; Sautter Decl. ¶ 10.)

DISCUSSION

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 or that the amount of the alleged debt is

incorrect. Petitioner may also 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. 31 C.F.R. § 285.11(f)(8)(ii). Under 31 C.F.R. § 285.11(k)(2), this Office must, “consider any information [relating to financial hardship] that is submitted with procedures and standards established by the agency.”

This Office adjudicates claims of financial hardship by examining whether a garnishment would substantially reduce a petitioner’s disposable income for an extended period of time. 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). Payments for essential monthly household expenses are also deducted from the disposable income figure prior to determining if a wage garnishment will create a financial hardship.

Here, Petitioner presents a claim of financial hardship stating, “[o]nly one income in this household . . . [h]ardship please see the [a]ttach (sic) Social Security [b]enefits decrease. Out knee surgery. House [p]ayment in the [r]ear. No pay next 6 – 8 wks.” (Petitioner’s Hearing Request (“Pet’r’s Hr’g Req.”), filed Sept. 27, 2011.) On two separate occasions, this Office ordered Petitioner to file documentary evidence to prove that repayment of the alleged debt would result in financial hardship. (*See*, Notice of Docketing, 2; Order, dated January 4, 2011.) The Order stated,

If Petitioner maintains that repayment of the alleged debt in this case would result in financial hardship, Petitioner may file documentary evidence to prove such hardship. Any such proof must be in the form of documentary evidence and must consist of pay statements and proof of actual payment of necessary household expenses, e.g., receipts, bank statements, and copies of checks, money orders, etc Failure to comply with this Order may result in the imposition of sanctions that may include the entry of judgment against you, a decision based on the documents in the record, or other sanctions deemed necessary and appropriate by the Administrative Judge. (Order, dated January 4, 2011)(emphasis in original.)

Petitioner has provided limited documentation in support of her claim of financial hardship, including an administrative offset bill (“Bill”) and a single pay statement (“Statement”). (Pet’r’s Hr’g Req at 3-7). Petitioner claims that imposing a garnishment of her wages, in addition to an existing administrative offset of her Social Security benefit (“Benefit”), would result in financial hardship. The Bill indicates that the offset reduced Petitioner’s Benefit of \$975 by \$146.25. The Bill, by itself, is insufficient evidence to show a substantial reduction in disposable income over an extended period of time because it fails to show either the duration of the \$146.25 reduction, or the amount of the underlying debt that is being offset. Furthermore, the bill does not show how frequently Petitioner receives the \$975 Benefit.

Similarly, Petitioner’s single Statement is insufficient to prove a substantial reduction in her disposable income over an extended period of time. The Statement shows that Petitioner made \$370.09 by working for 29.75 hours during a single pay period. This Office simply cannot

calculate Petitioner's disposable income over an extended period of time on the basis of what appears to be a weekly pay statement. In conclusion, this Office is unable to determine whether a financial hardship exists based upon this scant evidence, and therefore finds that no financial hardship would result from payment of Petitioner's debt to HUD.

ORDER

For the reasons set forth above, 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

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



H. Alexander Manuel
Administrative Judge

February 28, 2011