



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

In the Matter of:

Muriel Redd,
Petitioner

HUDOA No. 08-H-CH-AWG19
Claim No. 770998091

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Pro se

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For the Secretary

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 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 (10), this Office stayed the issuance of a wage withholding order until the issuance of this written decision on February 21, 2008.

Background

On December 4, 1995, Petitioner executed and delivered to California Lending Group, Inc. d/b/a United Lending Group an installment note (“Note”) in the amount of \$20,000 for a property loan that 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 March 18, 2008, ¶ 2, Ex. A.) California Lending Group, Inc. d/b/a United Lending Group assigned the Note to The First National Bank of Keystone, who assigned the Note to Coast Partners Acceptance Corporation. (*Id.*, ¶ 2, Exs. B and C.) Petitioner failed to make payments as agreed in the Note, and, consequently, on April 29, 1997, Coast Partners Acceptance Corporation assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (Sec’y Stat., ¶ 3, Ex. C and Ex. D, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 3.) The Secretary is the holder of the Note on behalf of the United States. (*Id.*)

The Secretary alleges that Petitioner is currently in default on the Note, and indebted to HUD in the following amounts:

- (a) \$19,909.89 as the unpaid principal balance as of February 29, 2008;
- (b) \$8,865.16 as the unpaid interest on the principal balance at 5% per annum through February 29, 2008; and
- (c) interest on the principal balance from March 1, 2008, at 5% per annum until paid.

(Sec’y Stat., ¶¶ 4-5 Ex. D, Dillon Decl., ¶ 4.) The Secretary has made efforts to collect the alleged debt by means other than by administrative wage garnishment, but has been unsuccessful. (Sec’y Stat., ¶ 4, Ex. D, Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice of Intent”) was sent to Petitioner by Diversified Collection Services on or around July 18, 2006 providing an opportunity for Petitioner to enter into a repayment agreement acceptable by the Secretary. (Sec’y Stat., ¶ 6, Ex. D; Dillon Decl., ¶¶ 5-6.); See 31 C.F.R. § 285.11(e)(2). The Notice indicated “You should call us at the telephone number listed below to discuss acceptable repayment plans.” (Dillon Decl., ¶ 6.) The Notice also indicated “If you pay your debt in full or enter into a written repayments [sic] plan acceptable to the Federal Agency before August 20, 2006, a garnishment order will not be issued to your employer.” (*Id.*) A Wage Garnishment Order dated August 23, 2008, was issued to Petitioner’s employer. (Sec’y Stat., Ex. D, Dillon Decl., ¶ 7, Ex. A.) The Secretary proposes a repayment schedule of 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 7, Ex. D; Dillon Decl., ¶ 8, Ex. B.)

Discussion

Petitioner does not dispute the existence of the debt, but rather disputes that the terms of the proposed repayment schedule would cause a financial hardship. In support of this assertion, Petitioner states that the Secretary’s proposed repayment schedule “will create an undo [sic] hardship.” (Letter from Petitioner to Diversified Collection Services (“Pet’r Feb. Ltr.”), filed

February 21, 2008; Letter from Petitioner (“Pet’r June Ltr.”), filed June 9, 2008.) More specifically, Petitioner states:

[Wage garnishment] has created and will continue to create a financial hardship. As a single parent with three children, I currently make the sole income for the family. . . . Due to my chronic illnesses, I was out of work for four months over the last year and a half without pay. . . . I know that I owe the money and need to pay it, but [garnishment] of my wages creates a severe hardship. . . .”

(Pet’r June Ltr.) Petitioner further asserts that “I have been on medical leave for several months at a time over the last two years without pay. And this only adds to the financial hardship.” (Pet’r Feb. Ltr.)

Pursuant to 31 C.F.R. 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that the terms of the repayment schedule would cause financial hardship. In support of her position, Petitioner provided this Office with a copy of her monthly pay statement for the pay period ending on May 31, 2008. Petitioner’s most recent pay statement reflects that Petitioner’s gross pay totaled \$4,592.58 monthly. (Pet’r June Ltr.; attach. pay statement.) 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) and (i)(2)(i)(A). After subtracting allowable deductions for: Medicare, \$58.79; Federal Withholding Tax, \$324.08; \$485 for Medical Insurance; \$14 for Vision Spectera; and \$20 for UHC Dental, Petitioner is left with a monthly disposable income of \$3,691 monthly.

In addition to Petitioner’s pay statement, Petitioner also provided this Office with a list of monthly expenses that included: rent, \$975; car note, \$397; car insurance, \$450; utilities, \$375; medicine, \$190; groceries, \$200; miscellaneous and past due medical bills, \$95. (Pet’r June Ltr., attach.) These monthly expenses total \$2682. Petitioner submitted proof of payments for her rent, medicine, and miscellaneous *past due* medical bills, however, Petitioner failed to submit proof of payments for the remaining expenses identified on her list such as her car note, car insurance, utilities, and groceries. (emphasis added) Petitioner did not submit recently incurred bills to support her claim of chronic illnesses and her inability to work. On September 3, 2008, this Office ordered Petitioner to provide, beyond a mere list of expenses, additional documentary evidence in further support of her claim regarding her medical condition and pay statements, if any, but Petitioner failed to comply with the directives of that Order.

Without documentary evidence, these listed expenses routinely would not be included. However, this Office has determined that credit may be given for certain essential household expenses, such as food and utilities, 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).

Thus in accordance with *Herring* and *Loera*, this Office will credit Petitioner with \$200 for groceries, and \$375 for utilities, as part of her essential household expenses, and a reduced amount for the car note and car insurance at \$198.50, and \$225.00 respectfully. With the ad-

justment to reflect the 50% reduction of the claimed expenses for the car note and car insurance, Petitioner's total expenses now total \$2258.50.

Petitioner's monthly disposable income of \$3691, less essential household expenses of \$2258.50, leaves Petitioner with a remaining balance of \$1432.50. A 15% garnishment rate of Petitioner's current monthly disposable income would equal approximately \$554 and leaves Petitioner with a monthly disposable income of \$878.50. This Office has the authority to order garnishment at a lesser rate based upon the record before it. 31 C.F.R. § 285.11(k) (3). However, based on the proof of income and expenses submitted by Petitioner, an administrative wage garnishment at the rate of 15% of Petitioner's disposable income would not present a financial hardship. Thus, Petitioner's claim of financial hardship fails for lack of sufficient and credible documentary evidence.

Petitioner also claims that the disposable income figure used by the Secretary to calculate the monthly garnishment amount is incorrect. Petitioner provided no documentary evidence to refute the disposable income figure relied upon by the Secretary. This Office has previously held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Darrell Van Kirk*, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, Petitioner's claim fails for lack of proof.

Petitioner requests, as a final point, that HUD no longer collect Petitioner's tax refunds and rebates to satisfy the alleged debt. (Pet'r Feb. Ltr.; Pet'r June Ltr.) Petitioner states that HUD has "levied [her] tax refund and [her] stimulus rebate," and requests that HUD "take the levy off [her] income tax check." (Id.) Petitioner's assertion regarding the collection of her tax refund and tax rebate is not relevant to the outcome of this administrative wage garnishment proceeding. Furthermore, 24 C.F.R. § 17.151 requires that before offset, "the Secretary ... provides the debtor with 65 calendar days written notice." 24 C.F.R. § 17.152(a) provides further that "a debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past due or not legally enforceable." Thus Petitioner, upon receipt of a Notice of Intent to Offset, has the right to file a separate request for review and then may submit documentary evidence in support of her position.

This hearing is held to review the Secretary's decision to collect the alleged debt by means of administrative wage garnishment. It is not the forum within which to address collection of the alleged debt by means of administrative offset, and thus, the offset or levy of Petitioner's tax refund is not relevant to the outcome of this administrative wage garnishment hearing. *See* 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner has offered to pay \$200 per month towards the alleged debt. (*See* Pet'r Feb. Ltr.) While Petitioner may wish to negotiate repayment terms with the Department, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, I find that the debt is legally enforceable against Petitioner in the amount claimed by the Secretary. 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 disposable income. The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is vacated.

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Vanessa L. Hall
Administrative Judge

December 12, 2008