

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

JENNIFER M. SMITH,

Petitioner.

HUDALJ No. 11-F-044-SO/1

October 11, 2011

Appearances:

Amanda J. Postiglione, Esq.
William Edwards, Esq.
U. S. Department of Housing and Urban Development, Washington, D.C.

For the Secretary

Chester L. Banks, Esq.
Woodbridge, VA

For Petitioner

DECISION AND ORDER

BEFORE: Alexander Fernández, Administrative Law Judge

This action was brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary”) pursuant to 5 U.S.C. § 5514 and 24 C.F.R. §§ 17.125-17.140 for the purpose of seeking an order permitting installment deductions from pay for indebtedness to the United States.

On August 30, 2011 this Court issued a *Ruling and Order* establishing the existence and amount of the debt and denying the Government’s request regarding the Secretary’s proposed offset schedule.

On September 6, 2011, the Court conducted a hearing on the remaining issue in the case: the Secretary’s proposed offset schedule. The hearing was conducted in accordance with 24 C.F.R. Part 26, Subpart A. The only witness to testify at the hearing was Petitioner. This case is now ripe for decision.

Applicable Law

Employees are responsible for paying their enrollee share of insurance premiums for every pay period during which they are enrolled. 5 C.F.R. § 890.502(a). If the employing office makes an administrative error as to the employee's enrollment, the employing office may retroactively correct such error. 5 C.F.R. § 890.103(a). If the correction of an administrative error results in the appropriate health benefits withholdings not being made, an employee incurs a debt to the United States in that amount. 5 C.F.R. § 860.502(a).

The Secretary is authorized to collect repayment of a debt owed by a federal employee to the United States via deductions at officially-established pay intervals from the employee's pay account. 5 U.S.C. § 5514; 24 C.F.R. § 17.136. After a determination that an employee is indebted to the United States, the Secretary must provide the employee with written notice of his intent to offset the employee's salary a minimum of 30 days prior to the first deduction. 24 C.F.R. §§ 17.127-17.128. Thereafter, the employee may request a hearing concerning: (1) the existence or amount of the debt; or (2) the Secretary's proposed offset schedule. 24 C.F.R. § 17.129(a).

Findings of Fact

1. Jennifer M. Smith ("Petitioner") is employed by the United States Department of Housing and Urban Development ("HUD").
2. The Secretary seeks to offset Petitioner's salary in the amount of \$57.58 per pay period until the debt is repaid.
3. Petitioner's pay grade is GS-13, step 7.
4. Petitioner earns gross pay in the amount of \$4,095.20 per bi-monthly pay period.
5. Petitioner's average net pay totals \$5,385 monthly.
6. After deducting Petitioner's total estimated monthly expenses of \$6,129 from her net pay, Petitioner is left with a monthly shortfall of -\$1,719.

Discussion

At the hearing Petitioner offered testimony concerning her request for a waiver of the debt to the United States and HUD's denial of that request. However, as the regulations granting this Court the jurisdiction limit the Court's review to the existence and amount of the debt as well as the Secretary's proposed offset schedule, the Court advised Petitioner that HUD's denial of Petitioner's waiver request was not at issue in the case at bar. (Hr'g Tr. 13; see also, Ruling on Summ. J. 5) Petitioner's counsel acknowledged the Court's holding in the *Ruling and Order* and proceeded to present evidence regarding the issue of the Secretary's proposed offset schedule. (Hr'g Tr. 13.) Petitioner asserts, and this Court finds, that repayment of the debt in the

manner proposed by the Secretary would create a hardship for her and her family.

The Secretary is authorized by regulation to deduct Petitioner's pay in an amount not to exceed 15 percent of Petitioner's disposable pay but not less than \$25 per pay period or \$50 monthly absent "the most unusual circumstances." 24 C.F.R. § 17.136(b). At the hearing, Petitioner presented evidence, in support of her argument, that included a Statement of Earnings and Leave for the fifteenth pay period of 2011, and an Income and Expense Worksheet. These two documents demonstrate that Petitioner suffers a monthly shortfall of about \$1,700. In addition, Petitioner testified that, notwithstanding the shortfall, if the debt is finally adjudicated against her, she could pay the minimum of \$25.00 per pay period.

The Secretary presented no evidence or witnesses to rebut Petitioner's claim regarding her monthly shortfall.

Accordingly, the Court finds that Petitioner has proven, by a preponderance of the evidence, that the circumstances in this case warrant the reduction of the Secretary's proposed offset scheduled to \$25 per pay period. By acknowledging that she could pay the \$25.00 per period upon a final adjudication, Petitioner has failed to establish an "unusual circumstance" that would warrant repayment of the debt to be lowered below the regulatory threshold.

Additionally, Petitioner requested that the Court stay any offsets of her salary until an appeal of this Court's decision that Petitioner owes this debt the United States. The regulations state that if an employee has timely filed a request for a hearing, "deductions [to liquidate the employee's debt] will begin after the hearing officer has provided the employee with a hearing, and the final written decision is in favor of the Secretary." 24 C.F.R. § 17.134 ; see also, 24 C.F.R. § 17.128(i) (stating that the ALJ's decision is final). There being no pressing reason to employ a stay, Petitioner's request is **DENIED**.

ORDER

It is **ORDERED** that the Secretary may seek offset of Petitioner's salary in the amount of \$25 per pay period for the duration of Petitioner's employment until the debt is paid in full. Additionally, Petitioner's request that any salary offsets be stayed is **DENIED**.

_____/S/_____
Alexander Fernández
Administrative Law Judge