



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

In the Matter of:

Janice Erickson,
Petitioner

HUDOA No. 12-M-CH-AWG08
Claim No. 770880315-OA

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Pro se

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For the Secretary

DECISION AND ORDER

On October 11, 2011, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development ("HUD") to collect an alleged debt against Petitioner. 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 alleged debt in contested administrative wage garnishment proceedings is enforceable against the 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 October 12, 2011, this Office stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, dated October 12, 2011).

Background

On September 28, 1993, the Petitioner executed and delivered a Note to Title West Mortgage, Inc. in the amount of \$20,000 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." ¶ 1, filed October 26, 2011, Exhibit 1, Note). After Petitioner defaulted on the loan, Title West Mortgage, Inc. assigned the Note to the United States of America on October 2, 1995 under regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 2: Declaration of Gary Sautter, Acting Director of the Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development ("HUD") ("Sautter Decl.") dated October 19, 2011, ¶ 3).

The Secretary has made efforts to collect from the Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 3; Sautter Decl. ¶ 4).

Petitioner is alleged to be indebted to the Secretary in the following amounts:

- a) \$8,983.65 as the unpaid principal balance as of September 30, 2011;
- b) \$37.43 as the unpaid interest on the principal balance at 5.0% per annum through September 30, 2011;
- c) Interest on said principal balance from October 1, 2011, at 5.0% per annum until paid

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

Pursuant to 31 C.F.R. § 285.11(e), A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated September 19, 2011, was mailed to Petitioner. (Sec'y Stat., ¶ 5; Sautter Decl. ¶ 5). In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was offered the opportunity to enter into a repayment agreement with HUD under mutually agreeable terms. To date, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 6; Sautter Decl. ¶ 6).

The Secretary's proposed repayment schedule is 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 9; Sautter Decl. ¶ 7.)

Discussion

Petitioner does not contest the validity of the debt to HUD in this case. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed October 11, 2011). Instead, Petitioner challenges collection of the debt on the grounds that an administrative wage garnishment in the amount

requested by the Secretary will create a financial hardship. *Id.* Petitioner bears the burden of proving, beyond a preponderance of the evidence, that the terms of the Secretary's proposed repayment schedule would create the claimed financial hardship. 24 C.F.R. § 285.11(f)(8)(ii).

This Office has held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)).

Specifically, Petitioner states: "the terms of proposed repayment schedule would create financial hardship. Enclosed is a list of my basic necessary and necessary expenses each month and my total income.... I am proposing a repayment schedule of \$50.00 per month; \$25.00 biweekly ." (Pet'r Hr'g Req.) This Office has held that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *In re Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986). However, the existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. 31 C.F.R. §§ 285.11(k)(3).

The Secretary is authorized to garnish up to 15% of a debtor's disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay, including salary and bonuses. 31 C.F.R. § 285.11(i)(2)(i), (c). Petitioner's twice monthly pay statements indicate that her average bi-weekly pay, for one month from August 2011 through September 2011 is \$1,160.00 After subtracting the allowable deductions for federal income tax withholding (\$118.94 biweekly average); Medicare (\$16.82 biweekly average); Social Security (FICA) (\$48.72 biweekly average), and California-Single \$21.80 biweekly average, Petitioner is left with an average biweekly disposable pay of \$953.72 biweekly.

To determine whether wage garnishment would create a financial hardship, this Office is able to credit Petitioner's essential living expenses against her disposable pay. However, Petitioner has not provided documentary evidence of essential living expenses in the form of bills and receipts. This Office has ruled that credit may be given for certain essential living expenses based on a petitioner's estimates when the "financial information submitted by Petitioner . . . [was found to be] generally credible . . ." *In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). However, none of Petitioner's estimates of her monthly rent, car insurance, phone coverage, gas, food, etc. are supported by documentary evidence. Therefore, notwithstanding this Court's discretionary powers, as enunciated in *Loera*, this Office will not credit Petitioner's claimed expenses unless and until some amount of credible evidence in the form of proof of payments has been provided.

Petitioner has provided evidence of a number of monthly expenses that this Office will not credit against her disposable pay. Such expenses include payments for the Africa Renewal, in support of a child in an orphanage in Africa. This Office does not consider payments for orphanages to be an essential living expense. *See Charles R. Chumley*, HUDOA No. 09-M-CH-AWG09 (April 6, 2009). Accordingly, this Office would exclude the payments for Petitioner's Africa Renewal from the calculation of her essential household expenses.

Furthermore, this Office ordered Petitioner, on October 12, 2011 and on January 17, 2012, to file documentary evidence to prove that Petitioner is not indebted to the Department in the amount alleged by the Secretary, or that the alleged debt is not legally enforceable against Petitioner. Petitioner failed to comply with these orders.

In sum, this Office will not credit Petitioner with any amount for essential living expenses. A 15% garnishment rate of Petitioner's biweekly disposable pay, as proposed by the Secretary, would equal \$143.06 and leave petitioner with a balance of \$810.66 every two weeks to cover her monthly expenses. Therefore, I find that Petitioner has not provided sufficient proof that the Secretary's proposed garnishment at a rate of 15% of Petitioner's disposable pay would create a financial hardship for Petitioner within the meaning of 31 C.F.R. § 285.11(f)(8)(ii).

Finally, Petitioner indicated that she wishes to reduce her monthly payment obligations of \$50.00 to \$25.00 per month. This Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

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



H. Alexander Manuel
Administrative Judge

March 27, 2012