



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

In the Matter of:

**Misty E. Whitaker,**  
Petitioner

HUDOA No. 12-M-NY-AWG13  
Claim No. 7-80724412-0

Misty E. Whitaker  
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*Pro se*

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**DECISION AND ORDER**

On August 31, 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 and by 24 C.F.R. Part 26, Subpart A. 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 November 10, 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.)

### **Background**

On July 20, 2009, Petitioner executed and delivered a Direct Installment Loan Disclosure and Note (“Note”) to PNC Bank, N.A. in the amount of \$25,000.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C § 1703. (Exhibit A). Contemporaneously on July 20, 2009, the Note was assigned by PNC Bank, N.A. to the Redevelopment Authority of the City of Philadelphia. Subsequently, the Note was assigned by Redevelopment Authority of the City of Philadelphia to PNC Bank, N.A.

When Petitioner subsequently defaulted on the loan, the Note was assigned to HUD under the regulations governing the Title I insurance program. (Sec’y Stat., ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated March 17, 2011, ¶ 3.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains in default. (Sec’y Stat., ¶ 3; Dillon Decl. ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$24,860.33 as the unpaid principal as of October 30, 2011;
- b) \$424.41 as the unpaid interest on the principal balance at 1% per annum through October 30, 2011;
- c) \$1,291.23 as the unpaid penalties and administrative costs as of October 30, 2011; and
- d) Interest on said principal balance from November 1, 2011, at 1% per annum until paid

(Sec’y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated March 29, 2011, was mailed to Petitioner. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 5.) Petitioner was offered the opportunity to enter into a repayment agreement with HUD under mutually agreeable terms. On April 28, 2011, Petitioner entered into a Repayment Plan Terms and Conditions with HUD wherein Petitioner agreed to pay \$250.00 per month. Petitioner defaulted on the repayment plan, however, after sending only one payment on May 27, 2011. (*Dillon Decl.*, ¶ 6.)

The Secretary’s proposed repayment schedule remains at \$243.98 biweekly or 15% of Petitioner’s disposable pay. (Dillon Decl., ¶ 7.)

## Discussion

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. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed August 31, 2011.) 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).

Specifically, Petitioner states: "I am writing this notice to advise that making the payment requested by HUD will present a financial hardship for me at this time. I agreed to make payments on this loan in the amount of \$250.00 as this was the least the representative would accept. As I explained at the time, this amount would pose a significant financial strain, and this has proven true. I am requesting payment arrangements be made in the amount of \$150.00 per month." (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 monthly gross pay, for one month from December 2011 through January 2012 is \$3,793.10 After subtracting the allowable deductions for federal income tax withholding (\$47.74 monthly average); Medicare (\$52.78 monthly average); Social Security (FICA) (\$152.88 monthly average), (*no indication of health insurance coverage*), Petitioner is left with an average disposable pay of \$3,049.32 monthly.

To determine whether wage garnishment would create a financial hardship, this Office will credit Petitioner's essential living expenses against her disposable pay. Petitioner has provided documentary evidence of essential living expenses in the form of bills and receipts. After examining the documentary evidence, this Office will credit Petitioner for the following monthly essential living expenses: rent/mortgage (\$916.00); gas/heat (\$248.00); electric (\$172.00); water/sewage (\$57.00); cell phone (\$150.00);<sup>1</sup> payment on auto loan (\$335.00); auto insurance (\$217.00); tuition for child (\$58.00);<sup>2</sup> food and household necessities (\$400.00); gasoline/transportation (\$175.00); laundry (\$100.00).

Petitioner has not provided copies of bills and receipts for electric and natural gas services that show the amount due and paid each month. However, this Office has determined 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

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<sup>1</sup> Petitioner submitted copies of bill payment for combined home phone, cable and internet service. Because this Office does not consider cable and internet to be an essential living expense, Petitioner will only be credited for payment made for cell phone service instead.

<sup>2</sup> Petitioner indicated that she receives child support payments in the amount of \$135.00 bi-weekly/\$270.00 monthly.

...” *In re Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). Petitioner’s estimates of her monthly electric and natural gas expenses are generally supported by the documentary evidence provided. Therefore, in accordance with *Loera*, this Office will credit Petitioner with monthly expenses of \$172.00 for electric service and \$248.00 for natural gas service.

Petitioner has provided no documentary evidence to support her estimate of \$400.00 spent monthly for groceries for *one adult and one child*, and \$175.00 spent monthly for gasoline. However, because Petitioner’s financial information is generally credible and her estimate for groceries for *one adult and one child* is reasonable, this Office will credit Petitioner with the full amount of her estimated monthly expenses for groceries. In addition, Petitioner’s claim that she spends \$175.00 a month for gasoline for her car appears to be reasonable.

Petitioner has also provided evidence of a number of monthly expenses that this Office will not credit against her disposable pay. Such expenses include payments for Petitioner’s cable television, internet service, emergency savings and entertainment. This Office does not consider payments for cable television and internet service to be essential living expenses. *See Charles R. Chumley*, HUDOA No. 09-M-CH-AWG09 (April 6, 2009). Furthermore, entertainment costs and emergency savings are not an essential household expense. Accordingly, this Office will exclude the payments for Petitioner’s home phone, cable television, and internet service, emergency savings and entertainment/miscellaneous from the calculation of her essential household expenses.

Petitioner also contends that a \$25.00 monthly payment for her charge accounts at Gap, Inc. and Capital One are an essential monthly expense, but Petitioner has provided no documentary evidence that funds borrowed on these charge accounts were spent on essential living expenses. Accordingly, no credit will be given for these expenses. *See Cynthia Ballard Rachall*, HUDOA No. 09-M-CH-AWG103 (August 6, 2009) (finding that the petitioner’s credit card bills would not be included in her monthly expenses calculation because the petitioner failed to provide documentary evidence to show, *with specificity*, that the credit card charges were for essential household expenses).

In sum, this Office will credit Petitioner with a total of \$2,828.00 monthly for essential living expenses. Petitioner’s disposable pay of \$3,049.32, less her essential living expenses of \$2,828.00 leaves a remaining balance of \$ 221.32 per month. A 5% garnishment rate of Petitioner’s monthly disposable pay, as proposed by the Secretary, would equal \$152.47 and leave petitioner with a balance of \$68.85 per month to cover her remaining expenses. Therefore, I find that Petitioner has 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).

This Office also notes that this finding relies in part on the assumption that Petitioner will continue to receive similar child support payments that are included in the calculation of Petitioner’s disposable pay for the purposes of administrative wage garnishment.

Finally, Petitioner indicated that she wishes to reduce her monthly payment obligations of \$250.00 to \$150.00 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 5% of Petitioner's disposable pay.



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H. Alexander Manuel  
Administrative Judge

March 22, 2012