



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

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In the Matter of:

**Gwendolyn L. Cooper,**  
 Petitioner

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 : HUDOA No. 10-H-NY-AWG32  
 : Claim No. 5474255 LL 9244

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Gwendolyn L. Cooper  
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Pro se

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For the Secretary

**DECISION AND ORDER**

On January 14, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and 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 of Housing and Urban Development (“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 (f)(10), on January 15, 2010, this Office stayed referral by HUD of this matter to the U.S. Department of the Treasury for issuance of an administrative wage garnishment order until the issuance of this written decision, unless a wage garnishment order had previously been issued against Petitioner.

### **Background**

On October 30, 1990, Petitioner executed and delivered to Royal Mobile Homes, Inc. a Retail Installment Contract (“Note”) in the amount of \$28,337.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement That the Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule (“Sec’y Stat.”), filed March 31, 2010, ¶ 2, Ex. A.) On that same day, the Note was assigned by Royal Mobile Homes, Inc. to Logan-Laws Financial Corporation. (*Id.* at ¶ 3, Ex. A.) Logan-Laws Financial Corporation subsequently went out of business, and the Government National Mortgage Association (“GNMA”) took over its loans. (*Id.* at ¶ 4, Ex. B, Declaration of Paul St. Laurent, III, Director, Mortgage-Backed Securities Monitoring Division of the GNMA within HUD (“St. Laurent Decl.”), dated March 25, 2010, ¶ 4.) As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. (*Id.* at ¶ 5.)

Petitioner is currently in default on the Note. (*Id.* at ¶ 4, Ex. B, St. Laurent Decl., ¶ 6.) The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains in default. (*Id.*, Ex. B, St. Laurent Decl., ¶ 6.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$15,738.25 as the unpaid principal balance;
- (b) \$6,627.59 as the unpaid interest on the principal balance at 14% per annum through September 25, 2009; and
- (c) interest on said principal balance from September 26, 2009 until paid.

(*Id.*, Ex. B, St. Laurent Decl., ¶ 6.)

A Notice of Intent to Initiate Wage Garnishment dated December 18, 2009 was sent to Petitioner. (*Id.* at ¶ 7, Ex. B, St. Laurent Decl., ¶ 7.) The Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under the terms agreeable to HUD in accordance with 31 C.F.R. § 285.11(e)(2)(ii), but Petitioner has not entered into a written repayment agreement. (*Id.* at ¶ 8, Ex. B, St. Laurent Decl., ¶ 7.) Based on the financial information submitted by Petitioner and pursuant to 31 C.F.R. § 285.11(i)(A), the Secretary proposes a repayment schedule of 7% of Petitioner’s disposable pay. (*Id.* at ¶ 9, Ex. B, St. Laurent Decl., ¶ 8.)

## Discussion

Petitioner challenges collection of the debt on the grounds that she does not owe the debt in the full amount alleged by the Secretary. Petitioner contends: (1) she is allegedly making payments, which exceed 15% of Petitioner's and her husband's combined income, towards the debt at issue in this proceeding; and (2) the proposed repayment schedule would cause a financial hardship. Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner, thereafter, must show by a preponderance of the evidence that amount of the debt is incorrect.

First, Petitioner challenges collection of the debt on the grounds that the amount of the debt is incorrect because her debt is an accumulation of debt from three different debt collections. "I am not denying I owe some amount, but I do not believe it is \$37,547.01." (Request for Hearing ("Pet. Hr'g. Req."), dated January 14, 2010). Petitioner further contends that there are three different debt collections being processed against her: a 15% garnishment of her husband's social security disability per month; a seizure of her husband's tax refund; and, the 7% garnishment proposed against Petitioner in this case by the Secretary. (Petitioner's Letter, "Pet'r Apr. Doc.," filed April 19, 2010.) Petitioner states: "I received on March 31, 2010 a letter from Jacob Javitts in New York, stating they will be garnishing my wages (7%). Please see attached copies. In addition, [Diversified Collection Service] is taking 15% of my husband[']s Social Security Disability (\$180.00) per month[;] in total this is 22% of our combined income. According to information I have acquired, I was told it would only be 15%." (Pet'r Apr. Docs.) Petitioner finally states that Diversified Collection Service "ha[s] taken [her] federal [income] tax . . . check in the amount of \$1398.00." (*Id.*)

While Petitioner admits that she owes some amount on the alleged debt, her challenge against the amount of the debt is not adequately supported by the evidence provided in the record of this proceeding. Beyond Petitioner's allegation that the amount of subject debt was not that claimed by the Secretary, Petitioner failed to produce evidence that would otherwise disprove the amount claimed by the Secretary as correct. Moreover, the only evidence Petitioner provided to further support that there were three different debt collections against her from HUD was a copy of Form SSA-099, a social security benefit statement for tax year 2009 for her husband, Duane F. Cooper. (Pet'r Apr. Docs.) Upon further review of the record in this proceeding, only one of the three debt collections referenced by Petitioner is relevant to the subject matter of this proceeding and that one is the Secretary's proposed repayment schedule of 7% of Petitioner's disposable pay, as recommended by Ginnie Mae at HUD. The remaining debt collection proceedings are beyond the scope of this Court's jurisdiction, and thus will not be addressed by this Court.

On the other hand, the Secretary has proven that the amount he claims is owed by Petitioner is not only correct, but is also the amount that will be paid off based upon the repayment schedule established by Ginnie Mae at the reduced garnishment rate of 7% of Petitioner's disposable income. (Sec'y. Stat., St. Laurent Decl., ¶8, Exh. B., Attach.)

The Secretary provided, as evidence, a copy of a letter from the Director of the Mortgaged-Backed Securities Monitoring Division of Ginnie Mae of HUD to Petitioner in which he stated:

In order to permit you to pay less than 15% of your wages you will need provide a copy of your statement of wages received from your employer to complete the package you have already provided and submit the information to me...After reviewing the submitted information, Ginnie Mae will determine the amount of your monthly payments.

(St. Laurent Decl., Attached Letter, dated February 18, 2010.)

The record also indicates that on March 10, 2010, the Petitioner submitted the required documentation as requested and that upon review by Ginnie Mae, the proposed 7% of Petitioner's disposable income was accepted as the proposed payment plan to pay off the alleged debt. (Sec'y. Stat, St Laurent Decl., ¶8.)

While the Secretary has met his burden of proof that the amount of the debt is not only correct, but is also enforceable, the Petitioner has failed to produce evidence that would otherwise refute the evidence presented by the Secretary. Therefore, Petitioner's claim fails for lack of sufficient evidence to support her position.

Second, Petitioner argues that the terms of the proposed repayment schedule would create a financial hardship. Petitioner asserts, "My family went from two incomes to one. My husband was diagnosed with [c]ancer. . . My husband is disabled, so there is still only one salary to live off[;] in addition I have vehicles I am trying to pay on that I no longer have due to repossession." (Pet. Hr'g. Req.)

As support, Petitioner provided this Office with a copy of her W-2 and financial statement as proof of her income and a copy of her bills as proof of her monthly expenses. (Pet'r Apr. Docs; Pet'r Mar. Docs.)

According to Petitioner's enclosed W-2 statement for tax year 2009, Petitioner earns \$2,622.86 per year. (Pet'r Feb. Docs.; Pet'r Mar. Docs.) Petitioner's disposable income 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). Petitioner has not submitted documentary evidence that reflects what her allowable deductible deductions from her gross income would be so her monthly disposable income is based on the W-2 statement and remains at \$2,622.86. (*Id.*)

Petitioner also submitted a copy of bills for the following essential monthly household expenses: mortgage, \$634.00 monthly; electric, \$143.16 monthly; automobile insurance, \$73.12 monthly; Regional Finance loan, \$246.00 monthly; HSBC card minimum payment, \$24.00 monthly; Credit Central loan, \$184.00 monthly; Orchard

Bank Gold minimum payment, \$24.00 monthly; Wells Fargo automobile finance, \$258.95 monthly; Santander loan, \$516.96 monthly; and water and sewer, \$28.00 monthly. Thus the sum total of Petitioner's essential expenses is \$2,232.18.

The following expenses will not be credited towards Petitioner's essential monthly expenses because Petitioner has not submitted sufficient documentary evidence to establish that these expenses are essential living expenses. They include bills for a student loan; property tax; HSBC credit card under the name of Petitioner's husband, Duane F. Cooper; cable television; Sprint mobile under Mr. Cooper's name; Aaron's Sales and Lease Ownership, Palms Country Club and Resort; Tempus Resorts International; license plate fee; etc.

Petitioner's monthly disposable pay of \$2,622.86, less essential expenses to cover basic subsidies of \$2,232.18 leaves Petitioner with a remaining balance of \$390.68. The Secretary proposes a repayment schedule of 7% of Petitioner's disposable pay. (Sec'y Stat., ¶ 9, Ex. B, St. Laurent Decl., ¶ 8.) A 7% garnishment rate of Petitioner's current monthly disposable pay would equal \$183.60, and would leave Petitioner with a positive balance of \$207.08 per month.

Pursuant to 31 C.F.R. § 285.11(k)(3), this Office has the authority to order garnishment at a lesser rate based upon the record before it. However, after considering the amounts to cover Petitioner's essential expenses, I find that an order for administrative wage garnishment of Petitioner's disposable income at the rate of 7% would enable Petitioner to meet expenses to cover basic household expenses. Thus, I find that Petitioner has not submitted sufficient documentary evidence to substantiate her claim that administrative wage garnishment of her disposable pay, in the amount sought by the Secretary, would create a financial hardship.

### **ORDER**

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. For the reasons stated above, it is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment to the extent authorized by law.



Vanessa L. Hall  
Administrative Judge

July 29, 2010