



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

In the Matter of:

Ricky Johnson,

Petitioner

HUDOA No. 10-M-CH-AWG06
Claim No. 77-0993316-OA

Ricky Johnson
207 21st Street
Canyon, TX 79015

Pro Se

Sara J. Mooney, Esq.
US Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On October 7, 2009, 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 Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b).

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 Secretary's proposed 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 October 20, 2009, 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. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated October 20, 2009.)

Background

On April 26, 1996, Petitioner executed and delivered a Retail Installment Contract-Security Agreement ("Note") to Oakwood Mobile Homes, Inc. and its assignee Oakwood Acceptance Corporation for a loan in the amount of \$26,532.70. (Secretary's Statement ("Sec'y Stat."), filed November 9, 2009, ¶ 1, Ex. 1.) The loan was insured by the Secretary against nonpayment by Petitioner pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (*Id.*)

Petitioner failed to make payments as agreed in the Note. Consequently, Oakwood Acceptance Corporation assigned the Note to the United States of America under the regulation governing the Title I Insurance Program. (Sec'y Stat., ¶2, Ex. 1, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 3.)

HUD has attempted to collect this debt from Petitioner, but Petitioner remains delinquent. (Sec'y Stat., ¶ 3, Ex. 2, Dillon Decl., ¶ 4.)

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

- (a) \$9,768.73 as the unpaid principal balance as of October 30, 2009;
- (b) \$2,294.82 as the unpaid interest on the principal balance at 5% per annum through October 30, 2009; and
- (c) Interest on said principal balance from November 1, 2009, at 5% per annum until paid.

(Sec'y Stat., ¶ 4, Ex. 2, Dillon Decl., ¶ 4.)

The Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was mailed to Petitioner on September 30, 2009. (Sec'y Stat., ¶ 5, Ex. 2, Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written agreement under terms mutually agreeable to HUD (Sec'y Stat., ¶ 6, Ex. 2,

Dillon Decl., ¶ 6.) Petitioner has not entered into a written repayment agreement under terms agreeable to HUD. (*Id.*)

The Petitioner's October 7, 2009 Request for Hearing indicated that he was willing to pay \$150.00 per month. (Sec'y Stat., ¶ 7, Ex. 3, Request for Hearing) However, according to Petitioner's November 4, 2009 letter to HUD's Albany office, Petitioner is no longer able to afford a payment plan of \$150.00 per month. (Sec'y Stat., ¶ 8, Ex. 2, Dillon Decl., ¶ 13, Ex. D.)

HUD erroneously issued a Wage Garnishment Order to Petitioner's employer on October 16, 2009. HUD acknowledges that the Wage Garnishment Order did not allow Petitioner 30 days to exercise his right to avoid wage garnishment after the September 30, 2009 Notice. (Sec'y Stat., ¶ 9, Ex. 2, Dillon Decl., ¶ 7, Exhibit A.)

Accordingly, a release of Administrative Wage Garnishment Order was issued to Petitioner's employer on November 6, 2009. (Sec'y Stat., ¶ 10, Ex. 2, Dillon Decl., ¶ 8, Ex. B.)

A bi-weekly pay statement provided by Petitioner dated November 2, 2009 indicates that his wages have been garnished in the amount of \$205.58. The Secretary is willing to refund this amount to Petitioner. (Sec'y Stat., ¶ 11, Ex. 2, Dillon Decl., ¶ 9, Ex. C.)

The November 2, 2009 pay statement filed by Petitioner indicates that his gross bi-weekly pay equals \$1,615.38. After allowable deductions of \$61.89 for federal taxes and \$118.66 for Social Security, Petitioner's bi-weekly disposable pay is \$1,434.83. (Sec'y Stat., ¶ 12, Ex. 2, Dillon Decl., ¶ 11, Ex. C.)

The Secretary proposes a repayment schedule of 15% of Petitioner's bi-weekly disposable pay resulting in an administrative wage garnishment of \$215.22. (Sec'y Stat., ¶ 13, Ex. 2, Dillon Decl., ¶ 11.)

Discussion

Petitioner does not contest the existence of the debt or that the debt is past due. Instead, Petitioner argues that the terms of the proposed repayment schedule would create a financial hardship for him. (Petitioner's Request for Hearing ("Pet'r's Hr. Req."), dated October 7, 2009.) Specifically, Petitioner states: "I [have not] paid this because I have been in a bad financial situation since then. I have gotten divorced and my child support is an outstanding \$600.00. I have another child on the way and I cannot afford to pay the full amount." (*Id.*)

Petitioner is permitted to present evidence that no debt exists, that the amount is incorrect, or that the terms of the repayment schedule would cause a financial hardship. 31 C.F.R. § 285.11(f)(8)(ii). In the Notice of Docketing this Office ordered Petitioner to "file, no later than November 17, 2009, documentary evidence which will prove that repayment of this alleged debt would cause a financial hardship to Petitioner." (Notice of Docketing, at 2.) In response, Petitioner filed a letter detailing his monthly expenses along with a copy of his electricity bill, an IRS bill, a Harley Davidson Credit Bill, a gas bill, a cable bill, a Maverick

finance bill, a letter from his rental office, an Aaron's bill and a copy of his child support agreement. (Petitioner's November Documents ("Pet'r Nov. Docs."), filed November 16, 2009.)

Petitioner submitted a monthly budget to this Office that included monthly amounts owing for: rent, \$450.00; electric, \$50.00; gas, \$19.00; insurance, \$65.00; motor vehicle, \$219.00; car payment, \$330.00; child support, \$660.00; and IRS, \$100.00, resulting in total essential household expenses of \$1893.00. (Pet'r Nov. Docs.)

Petitioner's evidence of the following expenses were not credited by this Office because Petitioner has not established that they are payments for essential household expenses: cable television, probation payment, Aaron's bill, World Finance bill and Canyon Finance bill. (Pet'r Nov. Docs.)

This Office has determined that credit may be given for certain essential household expenses, such as rent and food, 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 the holding in *Herring* and *Loera*, this Office will credit Petitioner with his alleged monthly expenses for food of 150.00. In addition, this Office will credit Petitioner with \$300.00 per month for his expectant child, resulting in total essential household expenses of \$2343.00. (Pet'r Nov. Docs.)

Petitioner's monthly disposable pay of \$2,869.66, less his share of essential expenses to cover basic subsidies of \$2343.00, leaves Petitioner with a remaining balance of \$526.66. A 15% garnishment rate of Petitioner's current monthly disposable pay would equal \$430.44, and leave Petitioner with a balance of \$96.22. A 10% garnishment of Petitioner's monthly disposable pay would equal \$286.96, and leave Petitioner with a balance of \$269.70. A 5% garnishment of Petitioner's monthly disposable pay would equal \$143.48, and leave Petitioner with a monthly disposable income of \$383.18.

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 in cases where financial hardship is found. However, this Office finds that the Petitioner has failed to submit sufficient documentary evidence to substantiate his claim that the administrative wage garnishment of his disposable pay, in the amount sought by the Secretary, would cause significant financial hardship for him. Therefore, this Office finds that the claim that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

ORDER

Based on the foregoing, I conclude that an administrative wage garnishment at the maximum amount authorized by regulations, would create a financial hardship for the Petitioner at this time. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at the rate of 5% of Petitioner's disposable pay.

The Secretary shall not be prejudiced from seeking an adjustment of the amount of the garnishment if, in the future, Petitioner's income increases or his necessary household expenses are reduced.



H. Alexander Manuel
Administrative Judge

November 23, 2009