



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

In the Matter of:

EVA ANNETTE WIGGINS,
Petitioner

HUDOA No. 10-M-NY-AWG65
Claim No. 77-0789839-0B

Eva Annette Wiggins
214 Jeb Stuart Drive
Newnan, GA 30265

For Petitioner

Julia M. Murray, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For New York/New Jersey Field Offices
26 Federal Plaza, Room 3237
New York, NY 10278-0068

For the Secretary

DECISION AND ORDER

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 administrative judges of this Office have been designated to determine whether the 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 March 19, 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 February 17, 1990, Petitioner executed and delivered a Manufactured Home Retail Installment Contract and Security Agreement (“Note”) payable to the order of Advanced Housing of S.A., Inc. in the amount of \$32,650.00. (Secretary’s Statement (“Sec’y Stat.”), filed April 7, 2010, ¶ 2, Ex. A.) Contemporaneously, the Note was assigned by Advantage Housing of S.A., Inc. to Green Tree Acceptance of Tx., Inc. (Sec’y Stat., ¶ 3, Ex. A.) When Petitioner failed to make payment on the Note as agreed, on February 3, 1995, Green Tree Acceptance of Tx., Inc. assigned the Note to the United States of America in accordance with 24 C.F.R. 201.54. (Sec’y Stat., ¶ 4, Ex. B.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 5.) The Secretary has filed a Statement with documentary evidence in support of her position that Petitioner is indebted to the Department in the following amounts:

- (a) \$14,095.34 as the unpaid principal balance as of February 28, 2010;
- (b) \$1,920.07 as the unpaid interest on the principal balance at 3% per annum through February 28, 2010; and
- (c) interest on said principal balance from March 1, 2010 at 3% per annum until paid.

(Sec’y Stat., ¶ 5; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated April 2, 2010, ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated February 19, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. (Sec’y Stat., ¶ 7, Dillon Decl., ¶ 6.) As of April 2, 2010, Petitioner has not entered into a written repayment agreement in response to the notice. (Sec’y Stat., ¶ 7, Dillon Decl., ¶ 6.) Based on a review of Petitioner’s pay statement for the period ending January 31, 2010, the Secretary proposes a weekly repayment schedule is \$112.80, or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 8, Dillon Decl., ¶ 7, Ex. A.)

Discussion

Petitioner argues that the alleged debt to HUD is unenforceable because the Secretary’s proposed repayment schedule would result in financial hardship for Petitioner: “[T]he terms of the repayment schedule would create a financial hardship as you can see by my Cash Flow Statement.” (Petitioner’s Request for Hearing (“Pet’r Hr’g Req.”), filed March 16, 2010.)

Petitioner further states, "The father of the children stopped paying any type of child support or assistance in 1995, when the children were 6 and 10 years of age. I am a single parent who has raised two children without the aid of any government assistance." (*Id.*)

Petitioner has indicated that her household consists of her two young adult sons and herself: "I am a single parent of two young adults, one of whom is still in college, and I still provide some assistance in support for him. The other will be moving home within the next few weeks." (Petitioner's Letter, Documents and CD ("Pet'r Docs."), filed April 27, 2010.) Petitioner claimed her two sons as her dependents on her 2009 federal income tax return. (*Id.*)

In support of her financial hardship claim, Petitioner submitted copies of her weekly pay statements; 2009 federal income tax return; bills, such as utilities, mortgage payments, automobile expenses, etc.; and statements from Petitioner's credit card accounts and checking account. (Pet'r Hr'g Req.; Pet'r Docs.)

Petitioner provided this Office with a copy of her weekly pay statement for the pay period from January 25, 2010 to January 31, 2010. (Pet'r Hr'g Req.; Pet'r Docs.) The pay statement reflects that Petitioner's gross pay totaled \$922.54 weekly. (Pet'r Hr'g Req.; Pet'r Docs.) The Secretary is authorized to garnish "up to 15% of the debtor's disposable pay," which 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) and (i)(2)(i)(A). After subtracting allowable deductions for Federal Income Tax, \$64.69; FICA, \$55.96; Medicare, \$13.09; Georgia State Tax, \$36.81; and health insurance, \$26.00, Petitioner is left with a disposable income of \$725.99 weekly or \$2903.96 monthly. (Pet'r Hr'g Req.; Pet'r Docs.)

Petitioner also submitted bills and records of payment for essential monthly household expenses which included home mortgage, \$985; water, \$23; gas, \$95; power \$127; waste, \$15; telephone, \$40; automobile insurance, \$324; automobile fuel, \$100; automobile maintenance, \$100; household food and maintenance, \$225; homeowner's fee, \$10; Kohls credit card minimum, \$5; Bank of America credit card minimum, \$101; Bank of America credit card minimum, \$39; and medical expenses, \$31. These essential household expenses total \$2120. (Pet'r Hr'g Req.; Pet'r Docs.)

Petitioner also provided documentary evidence of cable television, \$52; Internet, \$60; 24-hour monitoring, \$25; cellular phone, \$122; bank charges and tax return fees, \$5; church donations, \$22; dining/entertainment, \$75; gym membership/personal care, \$59; and clothing, \$50. These payments, however, will not be credited towards Petitioner's essential monthly expenses because Petitioner has not submitted sufficient documentary evidence to establish either a recent record of payment or the amount of ongoing expenses, or that the expenses are essential living expenses.

Petitioner's monthly disposable income of \$2903.96, less her monthly bills and expenses of \$2120, leaves Petitioner with a remaining balance of \$783.96. A 15% garnishment rate of Petitioner's current disposable income would equal approximately \$108.90 weekly or \$435.59 monthly, and leave Petitioner with a monthly disposable income of \$348.37. 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. After including 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 15% would enable Petitioner to meet expenses to cover basic household needs. 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 cause financial hardship.

Petitioner claims that on March 26, 2010, she received a call from Mr. Tom Sharlow from the Albany office, offering a repayment schedule of 5% of weekly net income. (Petitioner's Letter ("Pet'r Ltr."), filed April 19, 2010.) Petitioner claims that she informed Mr. Sharlow that she would be meeting with her accountant, and that she was in the process of proposing a settlement offer. (*Id.*) Petitioner further claims that "due to the sudden death of [her] mother on March 27, 2010, [she does] not have all the required documentation but [she] will have them by the April 30, 2010 deadline." (*Id.*) Petitioner, however, has failed to submit any further documentary evidence by April 30, 2010.

Furthermore, Petitioner proposes the following settlement offer: \$3,000.00 down (a half of Petitioner's life savings account) and \$30.00 per week, or \$120.00 per month, to be automatically drafted from Petitioner's savings account for a period of two years. (Pet'r Docs.) Petitioner is advised that this Office is not authorized to consider any settlement offer or any waiver of interest request on behalf of HUD. However, Petitioner may wish to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

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.



H. Alexander Manuel
Administrative Judge

June 17, 2010