



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

In the Matter of:

**Theresa L. Smart-Hicks,**  
 Petitioner

HUDOA No. 11-H-NY-AWG21  
 Claim No. 780672959

Theresa L. Smart-Hicks  
 1225 Pattison Avenue  
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Pro se

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For the Secretary

**DECISION AND ORDER**

On October 29, 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” or “the Department”). 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), on October 29, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision, unless a wage withholding order had previously been issued against Petitioner.

### **Background**

On June 3, 1992, Petitioner executed and delivered a Manufactured Home Retail Installment Contract and Security Agreement (“Note”) to Westland Dev. Ltd. Corp. d/b/a/ Mobile Designs in the amount of \$27,718.77, 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 (“Sec’y Stat.”), filed November 24, 2010, ¶ 2, Ex. A.) Contemporaneously, on June 3, 1992, the Note was assigned by Westland Dev. Ltd. Corp. d/b/a Mobile Designs to Green Tree Acceptance of Ohio Inc. (*Id.* at ¶ 3, Ex. A.) Petitioner failed to make payment on the Note as agreed. (*Id.* at ¶ 4.) Consequently, in accordance with 24 C.F.R. § 201.54, on November 2, 2005, Green Tree Servicing Corporation f/k/a Green Tree Acceptance of Ohio Inc. assigned the Note to the United States of America. (*Id.*, Ex. B.) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*, Ex. B.)

The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains delinquent. (*Id.* at ¶ 5; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the United States Department of Housing and Urban Development, HUD (“Dillon Decl.”), ¶ 4, dated November 12, 2010.) The Secretary alleges that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$12,786.97 as the unpaid principal balance as of October 31, 2010;
- (b) \$830.43 as the unpaid interest on the principal balance at 1% per annum through October 31, 2010;
- (c) \$1,912.45 as penalties and administrative charges as of October 31, 2010; and
- (d) interest on said principal balance from November 1, 2010 at 1% per annum until paid.

(Sec’y Stat., ¶ 5; Dillon Decl., ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Wage Garnishment dated September 9, 2010 was sent to Petitioner. (Sec’y Stat., ¶ 6; Dillon Decl., ¶ 5.) 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 repayment agreement. (Sec’y Stat., ¶ 7; Dillon Decl., ¶ 6.)

A Wage Garnishment Order dated October 11, 2010 was issued to Petitioner's employer by the Department of Treasury's Financial Management Service, but no garnishments have been made as of November 12, 2010. (Sec'y Stat., ¶ 8; Dillon Decl., ¶¶ 7, 8.)

Despite attempts to obtain Petitioner's current pay stub, she has not provided one to HUD. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 9.) Therefore, the Secretary proposes a repayment schedule of \$431.00 per month, which will liquidate the debt in approximately three years, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 9.)

### Discussion

Petitioner challenges collection of the debt on the grounds that the terms of the proposed repayment schedule would create a financial hardship. (Petitioner's Request for Hearing ("Pet'r Hr'g. Req."), filed October 29, 2010.) Petitioner asserts, "A garnishment of my wages would make it impossible for me to pay all of our essential bills. . . ." (Petitioner's Documentary Evidence ("Pet'r Evid."), filed November 29, 2010.)

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship. In support of Petitioner's claim of financial hardship, Petitioner provided this Office with copies of bills and payments, financial statements, pay statements, lease agreement and income tax forms. (*Id.*)

According to Petitioner's annual pay statement from January 1, 2010 through December 31, 2010, Petitioner's annual gross pay totals \$31,729.07. (Pet'r Evid.) Petitioner's disposable pay 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). After deducting allowable deductions, namely Medicare, Social Security and federal and state income tax withholding, Petitioner is left with a disposable pay of \$28,027.76 annually or \$2,335.65 monthly. (Pet'r Evid.)

Petitioner also submitted documentary evidence, along with proofs of payment, of the following essential monthly household expenses: rent, \$1,200.00; electricity and natural gas, \$243.72 average; water, sewer and waste/recycling, \$93.34 average; and car insurance, \$77.67 average. (*Id.*) In addition, Petitioner's alleged out-of-pocket medical expense of \$500.00 monthly is excessive and unsubstantiated by the documentary evidence provided by Petitioner. Based on the documentary evidence showing Petitioner's medical expense of approximately \$95.66 per month, that amount will be credited towards Petitioner's essential monthly household expenses.

Petitioner failed to file documentary evidence to support her claimed expenses of food and automobile gasoline and repairs. However, 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, 2009) (*citing Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In accordance with the holding in *Herring* and *Loera*, this Office will credit Petitioner with her alleged monthly expense for automobile gasoline and repair in the amount of \$50.00. While this Office will credit Petitioner with monthly expense for food, her alleged expense of \$500.00 is deemed excessive, and, therefore, only a portion of this expense, \$400.00, will be credited towards Petitioner’s essential monthly household expenses.

Petitioner’s monthly charge of \$141.80 average for cable/satellite television is not credited towards Petitioner’s essential monthly expenses because this expense is not considered an essential living expense. Petitioner’s alleged monthly charge of \$100.00 for clothing is also not credited towards Petitioner’s essential monthly expenses because Petitioner has not submitted sufficient documentary evidence to establish either a recent record of payment, or to establish the necessity of this expense being treated as a recurring monthly expense, or as an essential living expense. Thus, Petitioner’s essential household expenses total \$2,160.39 monthly.

Petitioner’s monthly disposable pay of \$2,335.65, less her monthly essential living expenses of \$2,160.39, leaves Petitioner with \$175.26. A 15% garnishment rate of Petitioner’s current disposable pay would equal approximately \$350.35 monthly, and leave Petitioner with a remaining balance of (-\$175.09). A wage garnishment of 10%, or \$233.56 per month, would leave Petitioner with a remaining balance of \$58.31. A garnishment rate of 5%, or \$116.78 monthly, would, however, leave Petitioner with a remaining balance of \$58.47 each 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. Upon due consideration of the record in this proceeding, this Office finds that the Petitioner has submitted sufficient documentary evidence to substantiate her claim that the administrative wage garnishment of her disposable income, in the amount sought by the Secretary, would cause a financial hardship.

While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, to impose an administrative wage garnishment against the Petitioner at any percentage of Petitioner’s income would constitute a financial hardship sufficient enough to forego collection at this time.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain indefinitely. It is hereby

**ORDERED** that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

**However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or his expenses for necessities are reduced.**



Vanessa L. Hall

Administrative Judge

February 4, 2011