



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

In the Matter of:

Lori Burks,

Petitioner.

HUDOA No: 11-M-CH-AWG23
HUD Claim No: 780717655

Lori Burks
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Pro se

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for the Secretary

DECISION AND ORDER

On November 8, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if 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 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 9, 2010, 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 (“Notice of Docketing”), dated November 9, 2010.)

Background

On April 13, 2007, Petitioner executed and delivered a FHA Title I Home Improvement Installment Note and Disclosure Statement (“Note”) to First Commercial Bank in the amount of \$6,350.00 that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. Sec. 1703. (Secretary’s Statement (“Sec’y Stat.”), filed November 24, 2010, ¶ 1; Ex. 1, Note, dated April 13, 2007.) After the Petitioner defaulted on the loan, First Commercial Bank assigned the Note to the United States of America on November 17, 2009 under the regulations governing the Title I Insurance Program. (Sec’y Stat., ¶ 2; Ex. 2. Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center (“Porter Decl.”), dated November 22, 2010, ¶ 3.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains in default. (Sec’y Stat., ¶ 3; Ex. 2, Porter Decl., ¶ 4.) Petitioner is alleged to be indebted to HUD on the Note in the following amounts:

- (a) \$5,735.54 as the unpaid principal balance as of October 30, 2010;
- (b) \$390.33 as the unpaid interest on the principal balance at 3% per annum through October 30, 2010; and
- (c) \$361.53 as the Penalties as of November 1, 2010;
- (d) \$35.33 as the administrative cost as of November 1, 2010;
- (e) interest on said principal balance from November 1, 2010, at 3% per annum until paid.

(Sec’y Stat., ¶ 4; Ex. 2, Porter Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated October 8, 2010, was sent to Petitioner. (Sec’y Stat., ¶ 5; Ex. 2, Porter Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a repayment agreement, but failed to enter into such an agreement. (Sec’y Stat., ¶ 7; Ex. 2, Porter Decl., ¶ 7.) Several attempts were made to obtain Petitioner’s current pay statement. (Sec’y Stat., ¶ 6; Porter Decl., ¶ 8.) As of November 22, 2010, Petitioner has not provided HUD with a current pay statement. (Sec’y Stat., ¶ 7; Ex. 2, Porter Decl., ¶ 8.) The Secretary’s proposed repayment schedule is \$196.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 8; Ex. 2, Porter Decl., ¶ 8.)

Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of proving, by a preponderance of the evidence, that no debt exists or that the amount of the alleged debt is incorrect. Petitioner may also 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 by operation of law. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner does not dispute the existence of the debt. Rather, Petitioner argues that the terms of the proposed repayment schedule would cause her a financial hardship. Petitioner states she “can make lower payments.” (Petitioner’s Request for a Hearing (“Pet’r Hr’g Req.”), filed November 8, 2010.)

In support of her financial hardship claim, Petitioner submitted a Consumer Debtor Financial Statement of essential monthly expenses showing: rent payment, \$497.00; gasoline, \$70.00; electric, \$172.00; food, \$200.00; car insurance, \$125.00; and medical expenses, \$100.00. (Pet’r’s Hr’g Req.) Petitioner also submitted: cable/internet, \$93.00 and “other expenses,” \$100.00. (*Id.*) Such expenses are not deemed to be essential household expenses for the purposes of administrative wage garnishment and will not be included.

However, in *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28, p. 4 (July 30, 2004), this Office held that credit may be given to certain essential monthly living expenses in instances, such as food, rent, and utilities where the Petitioner does not provide bills or other documentation., yet the “financial information submitted by Petitioner ... [was found to be] generally credible.” Accordingly, Petitioner will be credited with rent payment, \$497.00; gasoline, \$70.00; electric, \$172.00; food, \$200.00; car insurance, \$125.00; and medical expenses, \$100.00. (Pet’r’s Hr’g Req.) Petitioner’s essential monthly expenditures are adjusted to \$1164.00. *See Brenda Husband*, HUDOA No. 07-H-CH-AWG31 (February 14, 2008).

Petitioner submitted a Consumer Debtor Financial Statement which reflects an average monthly disposable income of \$1520.00, and after deducting monthly bills and expenses of \$1164.00, Petitioner is left with a remaining balance of approximately \$356.00 per month. The Secretary has proposed a repayment schedule of \$196.00 per month, or fifteen (15) percent of Petitioner’s disposable monthly pay, which leaves Petitioner with a positive balance of \$160.00 to meet any additional expenses Petitioner may have. Upon consideration, this Office finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary and garnishment of fifteen (15) percent of Petitioner’s disposable income would not constitute a financial hardship.

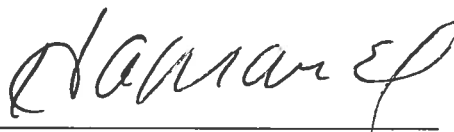
Additionally, although Petitioner stated she “can make lower payments” (Pet’r Hr’g Req.), this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of her financial status by submitting a Title I Financial Statement (HUD Form 56142) to her local HUD Office.

ORDER

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be past due and enforceable in the amount alleged by the Secretary.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's monthly disposable pay until fully paid.



H. Alexander Manuel
Administrative Judge

February 22, 2011