



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

In the Matter of:

GLORIA J. MOORE,
Petitioner

HUDOA No. 11-M-CH-AWG32
Claim No. 7-7095585108

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Pro se

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For the Secretary

DECISION AND ORDER

On November 15, 2010, Petitioner filed a hearing request concerning a proposed administrative wage garnishment action by the U.S. Department of Housing and Urban Development ("HUD") to collect an alleged debt against Peititioner. 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 alleged debt in contested administrative wage garnishment proceedings is enforceable against the 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 and by 24 C.F.R. Part 26, Subpart A. 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 December 15, 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.)

Background

In October 1994, Petitioner executed and delivered to Modern Home Care a Retail Installment Contract, & Disclosure Statement (“Note”) in the amount of \$9,500.00 that was insured against nonpayment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), dated December 30, 2010, ¶ 1, Ex. A.) Modern Home Care then assigned the Note to Empire Funding Corp. (*Id.*) When Petitioner subsequently defaulted on the loan, Empire Funding Corp. assigned the Note to HUD under the regulations governing the Title I insurance program. (Sec’y Stat., ¶ 2; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center (“Sautter Decl.”), dated December 23, 2010, ¶ 3.)

The Secretary has attempted to collect the amounts due under the Note, but Peititioner remains in default. (Sec’y Stat., ¶ 3; Sautter Decl. ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$4,954.72 as the unpaid principal as of December 21, 2010;
- b) \$0.00 as the unpaid interest on the principal balance at 5% per annum through December 21, 2010; and
- c) interest on said principal balance from December 22, 2010, at 5% per annum until the Note is paid in full.

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

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated January 4, 2010, was mailed to Petitioner. (Sec’y Stat., ¶ 5; Sautter Decl., ¶ 6.) On January 26, 2010, Petitioner entered into a Repayment Plan to repay the debt at \$200.00 per month, but Petitioner failed to make any payments under the Repayment Plan. (Sec’y Stat., ¶ 6; Sautter Decl., ¶ 6, Ex. A.) A Wage Garnishment Order, dated October 13, 2010, was issued to Petitioner’s employer. (Sec’y Stat., ¶ 7; Sautter Decl., ¶ 7.) Based on the Wage Garnishment Order, eight garnishment payments totaling \$408.78 have been applied to Petitioner’s account. (Sec’y Stat., ¶ 8; Sautter Decl., ¶ 8.) The Secretary’s proposed repayment schedule remains at \$43.82 per week or 15% of Petitioner’s disposable pay. (Sec’y Stat., ¶ 10; Sautter Decl., ¶ 9.)

Discussion

Petitioner challenges collection of the debt on the grounds that an administrative wage garnishment in the amount requested by the Secretary will create a financial hardship.

(Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed November 9, 2010.) Petitioner bears the burden of proving, beyond a preponderance of the evidence, that the terms of the Secretary's proposed repayment schedule would create the claimed financial hardship. 24 C.F.R. § 285.11(f)(8)(ii).

Specifically, Petitioner states: "I am applying for hardship. That this garnish of my wages and income tax is putting a strain on my household." (Petitioner's Second Letter ("Pet'r 2d Ltr."), filed January 27, 2011.) In support of her claim, Petitioner provided a variety of documentary evidence.

The Secretary is authorized to garnish up to 15% of a debtor's disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay. 31 C.F.R. § 285.11(i)2(i), (c). Petitioner's weekly pay statements for the pay periods ending January 13, 2011 through February 17, 2011 indicate that her average weekly gross pay is \$342.64. After subtracting the allowable deductions for Medicare (\$4.25 weekly average); Social Security (\$12.31 weekly average); health insurance (\$36.22 weekly average); and dental/vision insurance (\$6.24 weekly), Petitioner is left with disposable pay of \$283.22 weekly, or \$1227.29 monthly.

To determine whether wage garnishment would create a financial hardship, this Office will credit Petitioner's essential household expenses against her disposable pay. Petitioner has provided copies of receipts indicating she pays \$350.00 per month in rent; an account summary indicating an average monthly payment of \$176.77 for electricity; and payment history indicating a \$15.00 monthly payment for prescription medication. Petitioner claims she "can only afford about \$150 a month for groceries but [she does] go to the food bank in order to get can goods." (Pet'r 2d Letter.) To support her claimed food expenses, Petitioner submitted copies of four receipts for groceries and home cleaning supplies, dated between January 20 and February, 10, 2011, totaling \$79.56. This Office has determined that credit may be given for certain essential living expenses based on a petitioner's estimates when the "financial information submitted by [the] Petitioner . . . [was found to be] generally credible . . ." *David Herring*, HUDOA No. 07-H-NY-AWG53 (July 28, 2008) (quoting *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004). In accordance with *Herring* and *Loera*, this Office will credit Petitioner with her full \$150 monthly estimate for food expenses.

As further evidence of expenses, Petitioner provided "copies of loans [she] took out to buy a computer and to pay bills because [she is] so far behind." However, the documentation provided is insufficient for this Office to conclude that the loans are related to payment of essential household expenses. Accordingly, this Office will credit the Petitioner the following amounts for essential monthly household expenses: \$350.00 for rent, \$176.77 for electricity, \$15.00 for prescription medication, and \$150.00 for food, for a total of \$691.77.

Petitioner's disposable pay of \$1,227.29 less her essential household expenses of \$691.77 leaves a remaining balance of \$535.52 per month. A 15% garnishment rate of Petitioner's monthly disposable pay, as proposed by the Secretary, would equal \$184.09 and leave petitioner with a balance of \$351.43 per month to cover her remaining expenses. Therefore, I find that an

order for administrative wage garnishment of Petitioner's disposable pay at a rate of 15% would not create a financial hardship for Petitioner within the meaning of 31 C.F.R. § 285.11(f)(8)(ii).

In addition to her financial hardship claim, Petitioner suggests she is being singled out by HUD for collection of the debt, stating "I still do not understand why it is always myself that wages or income takes [sic] get garnish. Willie Stovall [the co-signor on the Note] owes this debt also, but I am always the one that HUD comes after." (Pet'r 2d Ltr.) As co-signors on the note, Petitioner and Willie Stovall are jointly and severally liable for repayment of the debt. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." *Marv Jane Lyons Hardy*, HUDBCA No. 87-1982-G314 (July 15, 1987)." That is, each co-signor is liable for the entire amount of the debt and the Secretary is not required to seek repayment from the co-signor before initiating wage garnishment proceedings against Petitioner. *See Beckie Thompson*, HUDBCA No. 04-D-CH-EE015 (April 29, 2005).

ORDER

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

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



H. Alexander Manuel
Administrative Judge

April 1, 2011