



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

In the Matter of:

David K. Horr,
Petitioner

HUDOA No. 11-M-CH-AWG81
Claim No. 780672454

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Pro se

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DECISION AND ORDER

On April 6, 2011, this Office received Petitioner's request for 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"). (Pet'r's Hr'g Req., filed April 6, 2011.) 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 may collect the alleged debt by means of administrative wage garnishment if the debt is contested by a debtor. 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 April 7, 2011, 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. (Notice of Docketing, Order, and Stay of Referral, dated April 7, 2011.)

Background

On June 9, 2000, Petitioner executed a Note in the amount of \$15,282.00 under the provisions of the Title I Insurance program. (Secretary's Statement ("Sec'y Stat"), filed April 20, 2011, ¶ 1, Ex. 1.) Petitioner defaulted on the Note and the Note was assigned to the Secretary pursuant to the provisions of the Title I Insurance Program. (Sec'y Stat., ¶ 2; Declaration of Gary Sautter, Director, Asset Recovery Division, Financial Operations Center of HUD ("Sautter Decl."), dated April 20, 2011, ¶ 3.)

HUD has attempted to collect this debt, but Petitioner remains in default. The Secretary states that Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$11,181.15 as the unpaid principal balance as of March 31, 2011;
- (b) \$142.44 as the unpaid interest on the principal balance at 2% per annum through March 31, 2011; and
- (c) interest on said principal balance from April 1, 2011, at 2% per annum until paid.

(Sec'y Stat., ¶ 4; Sautter Decl., ¶ 4.) A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated March 15, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 5, Sautter Decl., ¶ 5.) Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 6.) As of April 20, 2011, Petitioner has not entered into a written repayment agreement. (Sec'y Stat., ¶ 6; Sautter Decl., ¶ 7.)

The Secretary's proposed repayment schedule is \$314.54 per month, or 15% of Petitioner's disposable income, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards. (Sec'y Stat., ¶ 7; Sautter Decl., ¶ 8.)

Discussion

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), if Petitioner disputes the existence or amount of the debt Petitioner "must present, by a preponderance of the evidence, that no debt exists or that the amount of the debt is incorrect." Petitioner does not dispute his liability for this debt, but rather disputes the terms of the proposed garnishment. (Pet'r's Hr'g Req.) Specifically, Petitioner states that administrative wage garnishment in the amount proposed by the Secretary would result in financial hardship. (Petitioner's Evidence ("Pet'r's Evid."), filed July 7, 2011.) Accordingly, I find that Petitioner is indebted to HUD in the amount claimed by the Secretary.

In support of his financial hardship claim, Petitioner filed copies of bills, a copy of a bank statement, and a copy of a weekly pay statement. (Pet'r's Evid.) Petitioner's pay statement indicates a gross weekly pay of \$360, or \$1,440 monthly. 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. . . . includ[ing] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). After subtracting allowable deductions for federal tax, \$0.00; Social Security, \$51.98; Medicare, \$17.92; state tax, \$5.88; local tax, \$10.04; and health insurance, \$203.92, Petitioner is left with a monthly disposable income of \$1,150.25. (Pet'r's Evid.)

Petitioner filed documentary evidence of the following essential, monthly, household expenses: rent, \$850; phone, \$146.02; gas, \$109.89; electric, \$165.01; water, \$131.08; groceries and gas, \$423.21; and car and renters insurance, \$166.89. Petitioner's phone bill also reflects the cost of cable, which this Office does not consider to be an essential household expense. Accordingly, Petitioner will only be credited with the phone portion of the cable/phone bill, or \$73.01.

The following expenses are also not included as part of Petitioner's essential household expenses because Petitioner has not established that they are necessary household expenses: Sprint bill, \$308.00; license plate renewals, \$156.00, overdrawn fees, \$170; and a car repair bill, \$404.63. Thus, Petitioner's essential household expenses total \$1,919.09.

Petitioner's monthly living expenses of \$1,919.09 exceed his disposable income of \$1,150.25 by \$768.84. A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$172.54 per month, leaving Petitioner with a negative balance of \$941.38. A 10% garnishment rate would result in a garnishment amount of \$115.02 per month, leaving a negative balance of \$883.86. A 5% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of \$57.51, leaving a negative balance of \$826.35.

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, where financial hardship is found. Upon consideration, this Office finds that Petitioner has submitted sufficient documentary evidence to substantiate his claim that the administrative wage garnishment of his disposable income, in the amount sought by the Secretary, would cause a financial hardship.

ORDER

Based on the foregoing, I conclude that an administrative wage garnishment would create a financial hardship for Petitioner. Accordingly, it is

ORDERED that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall REMAIN IN PLACE, indefinitely. It is

FURTHER 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.

The Secretary shall not be prejudiced from seeking an administrative wage garnishment if Petitioner's financial circumstances warrant such action in the future.



H. Alexander Manuel
Administrative Judge

July 20, 2011