



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

In the Matter of:

RONNISE K. EATMAN,

Petitioner.

HUDOA No. 11-M-NY-AWG129

Claim No. 780730138

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Pro se

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DECISION AND ORDER

On August 11, 2011 this Office received Petitioner's request for a hearing concerning the proposed administrative wage garnishment of her income relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). 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 adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 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 any proposed 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 August 18, 2011, 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”), 2.)

Background

On September 10, 2008, Petitioner executed and delivered a Note to Domestic Bank in the amount of \$25,000.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. §1703. (Sec’y Stat., ¶ 1; Sec’y Stat., Exh. A, Note.) Petitioner failed to make payment on the Note as agreed. (Sec’y Stat., ¶ 2.) Consequently, and in accordance with 24 C.F.R. § 201.54, on December 27, 2010, Admirals Bank f/k/a Domestic Bank assigned the Note to the United States of America. (*Id.*; Sec’y Stat., Exh. B, Assignment.) The Secretary is the holder of the Note on behalf of the United States of America. (Sec’y Stat. ¶ 2.)

The Secretary has made efforts to collect this debt from Petitioner, but remains unsuccessful. (*Id.* at ¶ 4.) The Secretary alleges that Petitioner remains in default on the Note and is justly indebted to the Secretary in the following amounts:

- (a) \$23,314.86 as the unpaid principal balance as of July 31, 2011;
- (b) \$679.82 as the unpaid interest on the principal balance at 1% per annum through July 31, 2011;
- (c) \$1,532.58 as the unpaid penalties and administrative costs on the balance through July 31, 2011; and
- (d) interest on said principal balance from August 1, 2011 at 1% per annum until paid.

(Sec’y Stat., Exh. C, Declaration of Kathleen M. Porter, Acting Director, Asset Recovery division, Financial Operations Center of HUD (“Porter Decl.”), ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated July 13, 2011 was sent to Petitioner. (*Id.* at ¶ 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. (*Id.* at ¶¶ 6 and 7.) A Wage Garnishment Withholding Order was issued to Petitioner’s employer on August 12, 2011. (*Id.* at ¶ 8.)

Based on a review of Petitioner’s bi-weekly pay statement for the period ending July 31, 2011, the Secretary, after accounting for allowable deductions, proposes a bi-weekly repayment schedule of \$337.95 or 15% of Petitioner’s disposable pay. (*Id.* at ¶ 9.)

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 due to operation of law. 31 C.F.R. § 285.11(f)(8)(ii).

Petitioner does not dispute the existence of the debt. Rather, Petitioner questions the amount of the debt. Specifically, Petitioner argues, "If and when BOA (Bank of America) send you'll [sic] the money or HUD then I would love to work out a payment plan on the other half of the balance. My understand [sic] the balance is \$20,508.01 I will not pay back half of \$33,928.97." (Pet'r's Hr'g Req.)

With regards to Petitioner's claim that the unpaid balance on this debt to HUD is \$20,508.01, the Court finds that Petitioner has failed to meet her burden of proving this fact. Petitioner has not provided any documentary evidence demonstrating that the amount sought by HUD is incorrect. This Court has consistently held that assertions without evidence are insufficient to support a claim. *See In re Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Therefore, the Court finds that Petitioner's claim that the unpaid balance is only \$20,508.01 must fail for want of proof.

Petitioner also claims that repayment of this in the manner sought by the Secretary would cause her financial hardship. In support of her argument, Petitioner submitted the pay statements for three bi-weekly pay periods reflecting an average disposable pay of \$2,315.18 bi-weekly or \$4,630.36 monthly. (Pet'r's Documentary Evidence, filed Dec. 5, 2011.) After applying a 15 percent wage garnishment to Petitioner's disposable pay, Petitioner is left with about \$3,935.00 monthly to cover her essential household expenses.

As evidence of her essential household expenses, Petitioner submitted bills and proof of payment for the following monthly household expenses: rent, \$500; electric, \$84.28 (average); water and sewage, \$114.72 (average); Comcast XFINITY bundled services, \$189.07; Westlake Financial Services, \$729.62; car insurance \$280.00; and Cricket (cell phone), \$46.30. The Court notes that Petitioner's Comcast XFINITY bill and Westlake Financial Services bill will be excluded from Petitioner's financial hardship calculation as Petitioner has not demonstrated that the bills are for *essential* household expenses. *See In re Cynthia Ballard Rachall*, HUDOA No. 09-M-CH-AWG103, 4 (Aug. 4, 2009) (finding that the petitioner did not demonstrate, with specificity, that her credit card charges were for *essential* household expenses); *In re Howard G. Casey*, HUDBCA No. 03-C-CH-AWG08, at 3 (Dec. 27, 2002) (finding that the petitioner's living expenses reflected a living standard that can be adjusted downward to repay his substantial unpaid debt to HUD).

After excluding Petitioner's non-essential monthly expenses, the Court finds that Petitioner has only submitted documentary evidence of essential household expenses totaling \$1,102.25 monthly. This leaves Petitioner with over \$2,800 in monthly disposable pay to meet any additional household expenses. Accordingly, the Court finds that Petitioner has not met her burden to prove that administrative wage garnishment, in the manner proposed by HUD, would cause her financial hardship.

Lastly, Petitioner has indicated her desire to enter into a payment plan in lieu of the administrative wage garnishment being sought by HUD. The Court notes that it is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD. The Court's authority in these cases permits only a determination of whether the debt is enforceable and past due, the amount of the unpaid debt, and whether repayment in the manner sought by the Secretary would cause financial hardship. 31 C.F.R. § 285.11(f)(2). Should Petitioner wish to negotiate repayment terms with HUD, she may choose to discuss this matter with Lester J. West, Director HUD Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

ORDER

For the reasons set forth above, 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 an amount equal to \$347.28 bi-weekly or 15 percent of Petitioner's disposable pay.



H. Alexander Manuel
Administrative Judge

January 31, 2012