



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

In the Matter of:

MISTY WHITAKER,

Petitioner

HUDOA No. 11-M-NY-LL60
Claim No. 780724412

RULING AND ORDER UPON RECONSIDERATION

On February 13, 2012, Petitioner filed a statement asserting that her 2011 federal tax return was offset to repay her alleged debt to HUD. (Petitioner's Statement ("Pet'r's Stat.") filed February 13, 2012.) In the statement, Petitioner stated that she felt her tax return should not have been subject to offset because she has been "requesting assistance and complying with the appeals process since August of 2011." (*Id.*)

Attached to Petitioner's statement, and referenced within the statement, is an Order from this Court dated January 11, 2012, that ordered Petitioner to file documentary evidence of financial hardship. (*Id.*) Also attached to the statement is a letter from Petitioner, dated January 27, 2012, in which she elaborates on her financial hardship claim and provides additional documentary evidence. (*Id.*, attachs.) Petitioner's confusion appears to stem from the fact that this Court issued two orders to Petitioner on January 11, 2012, from two entirely separate proceedings.

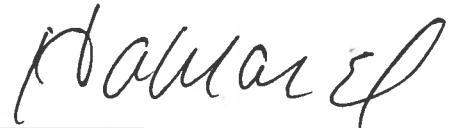
In any case, Petitioner's Statement is deemed to be a Motion for Reconsideration in the above-captioned offset proceeding which was dismissed with prejudice on January 11, 2012. The January 11, 2012 Ruling and Order of Dismissal found that Petitioner never filed a Request for Hearing in response to the Notice of Intent to Collect by Treasury Offset that was sent to Petitioner on January 31, 2011. (Ruling and Order of Dismissal, dated January 11, 2012.) Accordingly, unless Petitioner's tax refund was offset prior to January 11, 2012, her motion for reconsideration sets forth no basis for finding that her tax return was prematurely offset by the Government.

Moreover, Petitioner was advised in the previously-issued, Ruling and Order of Dismissal, dated November 23, 2011, that administrative offset proceedings such as this are "entirely separate and distinct" from administrative wage garnishment proceedings. (Ruling and

Order of Dismissal, dated November 23, 2011.) Petitioner's attachments referencing her financial hardship are therefore irrelevant to the current proceeding, as financial hardship is not a valid consideration in an administrative offset determination. Petitioner's parallel administrative wage garnishment action remains docketed as HUDOA No. 12-M-NY-AWG13. However, the Stay of Referral in that proceeding applies only to administrative wage garnishment proceedings, not to administrative offsets.

In the absence of any evidence demonstrating that the offset of Petitioner's tax refund occurred before the lifting of the Stay in this proceeding on January 11, 2012, this Court finds no basis for ruling in favor of Petitioner's Motion for Reconsideration. Therefore, and upon consideration, Petitioner's Motion for Reconsideration is **DENIED**. It is

ORDERED that the January 11, 2012 Ruling and Order of Dismissal is **AFFIRMED**, and shall remain in full force and effect.



H. Alexander Manuel
Administrative Judge

February 23, 2012