

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Dewayne Griggs,

Petitioner.

16-VH-0101-AO-014

7-210082630A

June 19, 2017

**RULING AND ORDER DENYING PETITIONER'S
REQUEST FOR RECONSIDERATION**

Currently before the Court is Petitioner's *Appeal Decision and Order* dated April 18, 2017, deemed by the Court to be a *Motion for Reconsideration* ("Motion"). The Court ruled on Petitioner's *Motion* on April 19, 2017 as HELD IN ABEYANCE. The Secretary was granted leave to file a response to reply to the arguments set forth in Petitioner's *Motion* on or before May 19, 2017. On May 19, 2017, the Secretary, through Counsel, filed a *Motion to Deny Petitioner's Motion for Reconsideration*.

Pursuant to 24 C.F.R. § 17.69 (d), Petitioner herein moves for reconsideration of the Court's *Decision and Order* ("Decision"), issued in the above-captioned case on March 16, 2017. In that *Decision*, the Court found that "after reviewing the record of this proceeding, the Court is not fully persuaded that Petitioner was released from his contractual obligation to pay in full, or has in fact paid in full, the debt that is the subject of this proceeding." *Decision*, 3.

DISCUSSION

Petitioner moves for reconsideration and raises again the issue of financial hardship. Petitioner claims, as a basis for his *Motion*, that the administrative offset in the amount sought by the Secretary would create a financial hardship for him. While the Court acknowledges Petitioner's financial circumstances, such concerns have already been fully considered and adjudicated in the *Decision and Order* issued on March 16, 2017.

Although 31 C.F.R. § 285.11(k)(1) provides that a debtor "whose wages are subject to a wage withholding order...may, *at any time*, request a review by the agency of the amount garnished, based on materially changed circumstances such as disability, divorce, or catastrophic illness which result in financial hardship," the same relief is not offered to a debtor under the governing regulations for administrative offset cases such as this one.

Instead, in administrative offset cases, reconsideration is within the Court's discretion and will not be granted in the absence of compelling reasons, e.g. newly discovered material evidence or clear error of fact or law. *See Paul Dolman*, HUDBCA No 99-A-NY-Y41 (November 4, 1999);

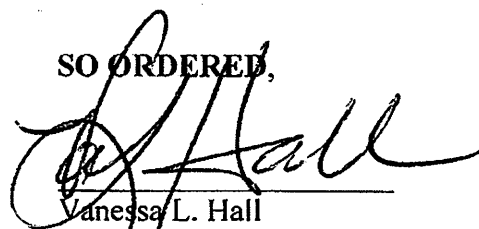
Louisiana Housing Finance Agency, HUDBCA No. 02-D-CH-CC006, (March 1, 2004); and *Wayne R. Cross*, HUDBCA No. 04-K-NY-EE007 (March 10, 2004). 24 C.F.R. §17.69 (d) also provides the same two exceptions that entitle Petitioner to review a previous decision issued by the Office of Hearings and Appeals: 1) when the debt has become legally unenforceable since the issuance of that decision; or, 2) when the debtor can submit newly discovered material evidence that the debt is presently not legally enforceable. So again, in administrative offset cases, financial hardship is not considered an exception or a basis for reconsideration.

The Court acknowledges Petitioner’s financial circumstances, but the laws in place limit the Court’s ability to provide relief should the imposition of an administrative offset create a financial hardship for the debtor. “Evidence of financial hardship in administrative offset cases, no matter how compelling, cannot be considered in determining, or reconsidering, the enforceability of the debt.” See 24 C.F.R. §17.69 (d); see also *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Therefore, consistent with case law precedent and statutory limitations, the Court finds that there is no basis for reconsideration in the case at hand based upon financial hardship.

The more prevailing issue, however, is Petitioner’s failure to timely file his *Motion for Reconsideration*. In the *Notice of Docketing* and the *Decision*, Petitioner was informed to file any *Motion for Reconsideration* of the Court’s written decision “within 30 days of the date of the written decision...” *Notice of Docketing*, 2; *Decision*, 4. In this case, the filing deadline for Petitioner’s *Motion* should have been April 16, 2017 since the *Decision* was issued on March 16, 2017. Instead, Petitioner filed his *Motion* on April 18, 2016, two days after the deadline. (Emphasis is added.) Therefore, it was too late anyway for this matter to be reconsidered by the Court simply because of Petitioner’s untimely filing.

Based on the foregoing, Petitioner’s *Motion for Reconsideration* is **DENIED**. The Secretary’s *Motion to Deny Petitioner’s Motion for Reconsideration* is **GRANTED**. It is hereby

ORDERED that the *Decision and Order* issued in this matter on March 16, 2017 **SHALL REMAIN IN FULL FORCE AND EFFECT** and **SHALL NOT BE MODIFIED**.

SO ORDERED,

Vanessa L. Hall
Administrative Judge