

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Dorsey Matthew
(FedDebt Case I.D.: 2005026508A),

Petitioner,

v.

Social Security Administration.

Docket No. C-16-501

Decision No. CR4620

Date: May 31, 2016

DECISION

Petitioner, Dorsey Matthew, is indebted to the United States government in the amount of \$1,055.54, plus any accrued interest, penalties, fees, and costs. The debt may be collected by administrative wage garnishment (AWG) or in any other manner permitted by law.

I. Jurisdiction

The Department of the Treasury (Treasury), Bureau of the Fiscal Service, Debt Management Services, notified Petitioner by a “Notice of Intent to Initiate Administrative Wage Garnishment Proceedings” dated March 21, 2016 (the Notice) that he was indebted to the Social Security Administration (SSA) in the amount of \$3,125.03. The Notice advised Petitioner that if he did not pay the debt or enter a repayment plan by April 20, 2016, Treasury would issue a wage garnishment order to Petitioner’s employer to collect the debt by deduction of up to 15 percent from his disposable pay per pay period until the debt is paid in full. The Notice advised Petitioner that he had the right to inspect records related to the debt and to request a hearing not later than April 11, 2016, and if he requested a hearing, the garnishment action would be delayed until a hearing is held and a decision issues. SSA Exhibit (SSA Ex.) 4. Petitioner requested a hearing using the form Treasury provided, which he signed and dated April 3, 2016. SSA Ex. 5.

On April 21, 2016, the Civil Remedies Division (CRD) of the Departmental Appeals Board (DAB), Department of Health and Human Services, received Petitioner's hearing request. The hearing request was forwarded to the CRD, as an attachment to an email from SSA dated April 21, 2016. The request for hearing was forwarded to the DAB for hearing and decision pursuant to an interagency agreement under which SSA refers cases involving the collection of debt from certain current SSA employees not represented by the American Federation of Government Employees (AFGE) and separated SSA employees (Interagency Agreement, ¶ I.B).

The matter was assigned to me for hearing and decision on April 28, 2016, and an Acknowledgment of Request for Hearing and Order to File Documents (Prehearing Order) was issued at my direction. The Prehearing Order was served upon Petitioner by mail at the mailing address listed on his request for hearing. On May 12, 2016, SSA filed a brief in support of approval of the wage garnishment and SSA exhibits 1 through 5. Pursuant to the Prehearing Order, Petitioner was required to file any documents, any written argument, and any request for an oral hearing not later than May 12, 2016. Petitioner has not filed any further documents, written argument, or request for an oral hearing, and I treat that failure as a waiver of the right to make such filings. Petitioner has not objected to my consideration of SSA Exs. 1 through 5 and they are admitted as evidence.

II. Discussion

A. Issues

Whether Petitioner is indebted to the United States government and, if so, the amount; and,

Whether collection of any debt may be accomplished by AWG?

B. Applicable Law

The Commissioner of SSA (Commissioner) has promulgated regulations applicable to the collection of administrative debts and overdue program overpayments owed to the government pursuant to 5 U.S.C. § 5514, 31 U.S.C. §§ 3716, 3720D, and 42 U.S.C. §§ 404(f), 405(a), 902(a)(5), and 1383(b). The regulations are found in 20 C.F.R. pt. 422. In this case, SSA referred the alleged debt of Petitioner to Treasury for AWG. The applicable regulations for AWG are found at 20 C.F.R. pt. 422, subpt. E, which is not applicable to debts arising from the payment of federal salary or wages and related benefits, and 20 C.F.R. § 422.833, which applies to collection of non-tax debt including debt related to the pay of former SSA employees.

The applicable regulation provides for collecting money from a debtor's disposable pay to satisfy delinquent non-tax debts owed to SSA. 20 C.F.R. § 422.833(a). Not less than 30 days prior to initiating AWG on a debt referred to it by SSA, Treasury sends a notice by first class mail to the debtor. The notice informs the debtor of the nature and amount of the debt; that Treasury intends to impose AWG until the debt, including accrued interest, penalties, and administrative costs, are paid in full; the debtor's right to review and copy records related to the debt and to enter a written repayment agreement; the debtor's right to request a hearing concerning the existence or amount of the debt; and the deadlines for exercising his or her rights. 20 C.F.R. § 422.833(e).

If a hearing is requested, the hearing may be a review of the documents offered as evidence and any written argument, or an oral hearing, if necessary, for example because issues cannot be resolved by review of documents alone or when it is necessary to consider issues of credibility or veracity. 20 C.F.R. § 422.833(f). The government has the initial burden of proving the existence and amount of the debt. If Petitioner continues to dispute the existence or amount of the debt, the burden shifts to Petitioner. The preponderance of the evidence is required to meet the burden of persuasion. 20 C.F.R. § 422.833(f)(5). The regulation requires that a decision be issued no more than 60 days after the request for hearing is received by the agency. 20 C.F.R. § 422.833(f)(7). My decision is the final agency action for purposes of judicial review under the Administrative Procedure Act, 5 U.S.C. § 551 *et. seq.* 20 C.F.R. § 422.833(f)(9).

C. Findings of Fact, Conclusions of Law, and Analysis

My conclusions of law are set forth in bold followed by a statement of the pertinent facts and my analysis.

1. Petitioner is indebted to the government in the amount of \$1,055.54, plus any interest, penalties, fees, and costs.

2. Collection by AWG is permissible.

a. Facts

It is not disputed that Petitioner resigned from SSA on September 20, 2001. Petitioner had a negative leave balance of 81.45 hours when he left the employment of the agency. SSA Exs. 1, 2. Based on Petitioner's hourly wage, less any deductions, the value of the leave advanced to Petitioner was calculated to be a net amount of \$1,055.54. SSA Ex. 3.

b. Analysis

Petitioner has not offered any argument or evidence to dispute the initial amount of the debt or the amount with accrued interest, penalties, and administrative costs. Petitioner

also has not argued that he is not legally obligated to repay the government for the advanced leave reflected by the negative leave balance upon his resignation on September 20, 2001.

SSA has met its burden. The Treasury notice of intent to initiate AWG dated March 21, 2016, satisfied the notice requirements of 20 C.F.R. § 422.833(e). SSA Ex. 4. There is no issue related to a repayment schedule in this case. SSA Ex. 5.

Petitioner asserts in his request for hearing that he did not owe the debt, he did not owe the amount of the debt, and that AWG would cause financial hardship. SSA Ex. 5 at 3. Petitioner submitted with his request for hearing a letter from SSA dated April 11, 2016, that shows that he requested that SSA check to determine whether or not there was any overpayment alleged by SSA based upon benefit payments on his father's record. SSA stated in the letter that there was no overpayment related to Petitioner's father's account. SSA Ex. 5 at 4. Petitioner's inclusion of the SSA letter with his request for hearing may indicate Petitioner was confused about the source of the debt that Treasury was attempting to collect by AWG. Petitioner presented no evidence to rebut that: he had a negative leave balance when he left employment with SSA on September 20, 2001; the value of the advanced leave was \$1,055.54; or the debt was subject to accruing interest, penalties and fees with a total debt at the time of the Treasury notice of \$3,125.03.

The amount collected from the disposable pay of a debtor by AWG may be adjusted due to financial hardship. 20 C.F.R. § 422.833(j). A debtor subject to AWG can request Treasury review based on financial hardship at any time. 20 C.F.R. § 422.833(j)(1). The Hearing Request form that Petitioner completed instructed that if he alleged financial hardship he had to submit a signed financial statement with copies of earnings and income records and proof of expenses. SSA Ex. 5 at 3. Petitioner did not present any evidence from which I can conclude that AWG would subject him to financial hardship. I conclude that Petitioner had not shown any financial hardship at this time that is a basis for me to relieve Petitioner of part or all of the debt.

I conclude based upon the foregoing facts that Petitioner is indebted to the government in the amount of \$1,055.54. The debt is based on his negative leave balance of 81.45 hours for advanced annual leave that was recorded at the time of his resignation from SSA on September 20, 2001. Petitioner has presented no credible evidence that he repaid any portion of the debt. Petitioner has also presented no evidence or argument that would support a conclusion that SSA has no right to collect the debt. Petitioner's debt is subject to accruing interest, penalties, and fees. The total debt, with interest, penalties, and fees, was calculated as \$ 3,125.03 on March 21, 2016. SSA Ex. 4 at 1. I conclude that Petitioner has not shown any financial hardship that is a basis for me to relieve Petitioner of part or all of the debt.

