

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

In the Matter of:

JUNIA FABIEN,

Petitioner.

24-VH-0156-AG-109  
(Claim No. 721022346)

March 25, 2025

**DECISION AND ORDER**

On February 22, 2024, Junia Fabien (“Petitioner”) filed a *Hearing Request* (“*Request*”) seeking a hearing concerning the amount, enforceability, or payment schedule of 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 garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

**FINDINGS OF FACT**

On May 25, 2012, Petitioner executed a Subordinate Note (“The Note”) in favor of the Secretary in the principal amount of \$74,219.95. The funds secured by the Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage current to provide foreclosure relief.

The terms of the Note included Petitioner’s promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Note. The Note required payment on or before May 1, 2042, or, if earlier, when the first of the following events occurs:

- i. Borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust, or similar security instruments insured by the Secretary, or;
- ii. the maturity date of the primary Note has been accelerated, or;
- iii. the primary Note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary, or;

- iv. the property is not occupied by the purchaser as his or her principal residence.

On or about October 25, 2022, Petitioner's primary mortgage was paid in full, and the FHA mortgage insurance was terminated by the primary lender. These events caused the Note to become due. The total amount due now consists of:

- i. \$74,219.95 as the unpaid principal balance as of February 29, 2024;
- ii. \$1,113.30 as the unpaid interest on the principal balance at 3.0% per annum through February 29, 2024;
- iii. \$4,550.01 as the unpaid penalties and administrative costs on the balance through February 29, 2024; and
- iv. interest on said principal balance from March 1, 2024, at 3.0% per annum until paid.<sup>1</sup>

A "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated January 16, 2024, was sent by the U.S. Department of Treasury on behalf of HUD to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms.

HUD's attempt to obtain Petitioner's current income information was unsuccessful. Therefore, HUD proposes a wage garnishment repayment schedule of \$2,218.98 per month to liquidate the debt in approximately three years, or alternatively an amount equal to 15% of Petitioner's disposable income.

## DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. See 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. See 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable and Proposed Repayment Schedule* ("*Secretary's Statement*") together with a copy of the Subordinate Note signed by Petitioner and the Declaration of Brian Dillon, Director, Asset Recovery Division, wherein Mr. Dillon states the full amount of the debt owed by Petitioner. The express language of the Note, signed and agreed to by Petitioner, states under "Borrower's Promise to Pay," that "[i]n return for a loan received from Lender, Borrower promises to pay the principal sum of seventy-four-thousand-two-hundred-nineteen dollars and ninety-five cents (US \$74,219.95) to the order of the Lender." Further, the Note states that payment will be made at US Department of HUD c/o

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<sup>1</sup> If found liable for the debt, Petitioner may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6).

DEVAL LLC, Irving, Texas. Accordingly, the copy of the Note submitted by HUD under oath is sufficient to establish the existence and the amount of the debt owed by Petitioner.

In her *Request*, Petitioner claims she does not owe the debt. Upon learning more information about the debt, Petitioner claims that when she sold her home the closing attorneys did not indicate that any debt was owed to HUD. However, “[a] third party's error or negligence does not relieve Petitioner of liability for the debt... Petitioner's obligation to pay the debt derives from the terms of the Note.” *In re Stephond West*, HUDOHA No. 17-AM-0026-AG-006 (Mar. 14, 2018) (citing *In re Bryan McClees*, HUDOHA No. 17-AM-0037-AO-010 (Feb. 14, 2018)). Therefore, Petitioner is responsible for the debt based on the terms of the Note, regardless of any error on the part of the closing attorneys.

Lastly, Petitioner claims that garnishment of her wages would cause financial hardship for her family. For Petitioner to show financial hardship, she “must submit ‘particularized evidence,’ including proofs of payment, showing that [she] will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” *See In re Hongmei Zhang*, HUDOHA No. 24-AF-0163-AG-093, slip op. at 3 (Dec. 3, 2024). In support of her claim that a garnishment in this amount would cause financial hardship, Petitioner submitted a copy of her pay stub, as well as this list of expenses: \$300 (electricity), \$2,538.87 (mortgage), \$857.15 (phone company indebtedness), \$137.08 (water), \$800 (food), \$160 (gas). Petitioner also lists two lines of credit card debt.

Petitioner provided proof of her monthly household expenses for electricity, mortgage, phone company indebtedness, and water. These expenses, which are supported with documentation, are essential and should be included in the Tribunal’s financial hardship calculation. However, Petitioner did not provide documentation to support her food and gasoline. Generally, where there is insufficient documentation, credit may only be given for certain essential subsistence expenses that are found to be generally credible. *See In re Nicole Spencer*, HUDOHA No. 22-AM-0132-AG-090, at 3 (Nov. 15, 2023) (citing *Carolyn Reed*, HUDOHA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012)). Such subsistence expenses include food and gasoline. Therefore, although Respondent did not provide evidence of these expenses, the Tribunal can include them in this essential household expenses calculation by applying the Internal Revenue Service, Collection Financial Standards (“IRS Standards”). *See Internal Revenue Service, Collection Financial Standards* (Aug. 22, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

In general, a petitioner’s claimed expenses that exceed the IRS Standards will be credited only if the Petitioner provides documentation to substantiate those expenses as necessary living expenses. *See Internal Standards*. Here, although Petitioner failed to provide documentary evidence of food and gasoline, the total claimed by Petitioner is less than or sufficiently similar to the IRS Standards that the Tribunal will use the figures Petitioner claims.<sup>2</sup> Accordingly, Petitioner’s monthly essential household expenses are calculated to total \$4,793.10.

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<sup>2</sup> The IRS Standards do not provide estimates for specific costs such as gasoline, however they provide for a transportation cost which includes these expenses among others related to the expense of maintaining a vehicle.

Finally, Petitioner provided proof of two credit card debts that will not be included in the financial hardship calculation because Petitioner has not demonstrated that these charges are for essential household expenses. Without evidence that the charges were for essential household expenses, the Tribunal will not include these credit card debts in the financial hardship calculation. See *In re Derrick Byrd*, HUDOHA 23-AM-0001-AG-001, at 5 (Sept. 30, 2024) (excluding a petitioner's credit union debt because the petitioner failed to provide particularized evidence that the debt was incurred for essential household expenses).

Petitioner's pay stub shows an average monthly disposable pay of \$4,005.55 while her essential monthly expenses total \$4,793.10. Accordingly, a monthly garnishment of \$2,218.98 leaves Petitioner with a balance of -\$3,006.53 each month if the proposed garnishment rate is allowed.

Petitioner has met her burden of proof that the Secretary's proposed garnishment rate would cause severe financial hardship. This Tribunal has the authority to order garnishment at a lesser rate based upon the record before it. See 31 C.F.R. § 285.11(k)(3). While the Secretary has successfully established that the subject debt is legally enforceable and past due against Petitioner in the amount so claimed in this case, the Tribunal finds under 31 C.F.R. § 285.11(k)(3) that a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient to justify suspension of collection action at this time.

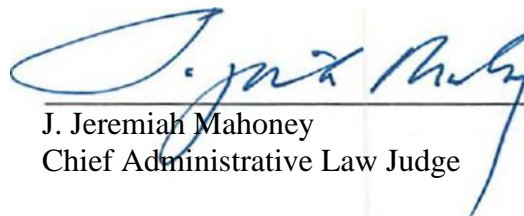
### ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury on July 28, 2023, for administrative wage garnishment shall remain in place, indefinitely. Therefore, it is hereby

**ORDERED** that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment based on Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment in the future, should Petitioner's income increase, or her essential household expenses be reduced.

**SO ORDERED,**



J. Jeremiah Mahoney  
Chief Administrative Law Judge

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**Finality of Decision.** Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 *et seq.*).