



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

In the Matter of:

**Charlene Barnes, a/k/a**  
Ava Charlene Barnes,  
  
Petitioner.

HUDOA No. 10-M-CH-AWG91  
Claim No. 770760939 B

Charlene Barnes  
445 Western Boulevard M.  
Jacksonville, N.C. 28546

Pro se

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U.S. Department of Housing and  
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For Midwest Field Offices  
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For the Secretary

**DECISION AND ORDER**

On May 17, 2010, Petitioner requested a hearing concerning a proposed administrative wage garnishment relating to debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). 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 are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a debtor. 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 the 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 June 4, 2010, 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, dated June 4, 2010.)

### **Background**

On December 27, 1985, Charlene Barnes, a/k/a Ava Charlene Barnes ("Petitioner") and Marie D. Barnes executed and delivered to Conner Homes a Note and Purchase Money Security Agreement for a manufactured home ("Note") in the amount of \$12,729.28. (Secretary's Statement ("Sec'y Stat."), filed July 1, 2010, ¶ 2, Ex. A.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 3.) Petitioner failed to make payments as agreed in the Note, and the Note was subsequently assigned to HUD. (Sec'y Stat., ¶ 4; Porter Decl., ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. HUD has filed documentary evidence alleging that Petitioner is indebted to HUD in the following amounts:

- (a) \$3,528.88 as the unpaid principal balance as of May 30, 2010;
- (b) \$749.70 as the unpaid interest on the principal balance at 3% per annum through May 30, 2010; and
- (c) interest on said principal balance from June 1, 2010, at 3% per annum until paid.

(Sec'y Stat., ¶ 7; Porter Decl., ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated April 22, 2010 was sent to Petitioner. (Porter Decl., ¶ 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, but did not elect to do so. (Sec'y Stat., ¶ 6; Porter Decl., ¶ 6.) Petitioner provided a copy of her pay statement for the two week period ending on May 14, 2010. (Porter Decl., ¶ 7, Ex. B.) This pay statement indicates that the Petitioner's bi-weekly net disposable pay for the purpose of administrative wage garnishment totals \$882.52. (Porter Decl., ¶ 7, Ex. B.) Based on the pay statement, the Secretary proposes an administrative wage garnishment in the amount of \$132.37 per bi-weekly pay period or 15% of Petitioner's disposable pay. ((Sec'y Stat., ¶ 8; Porter Decl. B ¶ 7.)

### **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 argues that the terms of the proposed repayment schedule would cause her a financial hardship. On June 4, 2010, this Office ordered Petitioner to

file documentary evidence to support her financial hardship claim. (Notice of Docketing, p. 2.) The Notice of Docketing stated that “[t]o prove financial hardship, Petitioner’s documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment of household expenses.” (emphasis in original) (*Id.*) Pursuant to the Order set forth in the Notice of Docketing, Petitioner was required to file such evidence, “no later than July 21, 2010.” (emphasis in original) (*Id.*) On July 7, 2010 Petitioner filed a letter with this office stating:

WHAT A WASTE OF TIME. PUTTING A PROFILE  
FOR YOU TO SEE THE REAL SITUATION WAS  
TO NO AVAIL. HARDSHIP YOU SAY? THE  
ONLY CONCERN IS EVIDENT IN PARAGRAPH# 7  
THAT SAID IT ALL-\$132.37 BY WKLY. IT WOULD  
NOT HAVE MADE ANY DIFFERENCE-IF THIS IS  
NOT A HARDSHIP-THEN NOTHING WOULD  
MEET THAT CRITERION. THOMAS JEFFERSON  
SAID IT RIGHT THE FIRST TIME Subjects/  
CITIZENS ARE NOT TREATED THIS WAY. SO  
MUCH FOR OUR GREAT COUNTRY. WE  
FORGIVE FOREIGN COUNTRIES BILLIONS AND  
OUR Subjects NO I MEAN CITIZENS ARE NOT  
FORGIVEN EVEN IF HARDSHIP RESULTS.

(emphasis in original) (Pet’r’s Ltr., filed July 7, 2010.) Petitioner did not submit any documentary evidence with her July 7, 2010 letter to support her financial hardship claim.

On September 29, 2010, this Office again ordered Petitioner to file documentary evidence to support her financial hardship argument. (Order, dated September 29, 2010.) The Order required Petitioner to file her documentary evidence on or before October 18, 2010 and stated that, “[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” (emphasis in original) (*Id.* at 2.)

Petitioner failed to respond to both the June 4, 2010 and the September 29, 2010 Orders, and is therefore in violation of 24 C.F.R. §26.4(a)<sup>1</sup>. Pursuant to 24 C.F.R. § 26.4(c)<sup>2</sup>, this Office finds Petitioner has not met her burden of defense to the Secretary’s allegations against her. This Office has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Petitioner has failed to submit any documentary evidence to prove her financial hardship claim and has, therefore, failed to comply with the Orders issued by this Office. Since Petitioner does not offer any evidence to support her claim that administrative wage garnishment in the

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<sup>1</sup> 24 C.F.R. § 26.4(a) states that “[t]he hearing officer may sanction a person, including any party or representative, for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.”

<sup>2</sup> 24 CFR §26.4(c) sets forth the specific sanctions that may be imposed, including “any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party . . .”

amount proposed by the Secretary would create a financial hardship, this Office finds that Petitioner's argument fails for want of proof.

**ORDER**

For the reasons set forth above, this Office finds the debt that is the subject of this proceeding to be past due and enforceable in the amount alleged by the Secretary.

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 the amount of 15% of Petitioner's disposable pay, or \$132.37 per bi-weekly pay period, until fully paid.



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H. Alexander Manuel  
Administrative Judge

December 17, 2010