



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

In the Matter of:

**Jacki Flanders,**

Petitioner.

HUDOA No. 11-M-CH-AWG10  
Claim No. 721005478

Jacki Flanders  
1600 Cheryl Street  
Albert Lea, MI 56007-2216

Pro se

James Webster, Esq.  
U.S. Department of Housing and  
Urban Development  
Office of Assistant General Counsel  
For Midwest Field Offices  
77 West Jackson Boulevard  
Chicago, IL 60604

For the Secretary

**DECISION AND ORDER**

On September 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 October 20, 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 October 20, 2010.)

## **Background**

On May 25, 2005, Jacki Flanders ("Petitioner") executed and delivered to the Secretary a Subordinate Note ("Note") and Security Instrument to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her home. (Secretary's Statement ("Sec'y Stat."), filed November 9, 2010, ¶ 1, Ex. # 1.) The original amount to be repaid under this Note was \$3,759.00. The Note also cited specific events that made the debt become due and payable, one of these events being if the Petitioner had paid in full all amounts due under the primary note and related mortgage insured by the Secretary. On or about November 30, 2007 the FHA insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec'y Stat., ¶¶ 2-3; Dillon Decl., ¶ 4.)

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

- (a) \$3,759.00 as the unpaid principal balance as of October 31, 2010;
- (b) \$454.14 as the unpaid interest on the principal balance at 5% per annum through October 31, 2010; and
- (c) interest on said principal balance from November 1, 2010, at 5% per annum until paid.

(Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 3, 2010 was sent to Petitioner. (Dillon Decl., ¶ 6.) 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 declined to do so. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 6.) Several attempts were made to obtain Petitioner's current pay statement. The Secretary's proposed repayment schedule is \$117.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 9; Dillon Decl. ¶ 8.)

## **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 she does not owe the full amount of the debt. On October 20, 2010, this Office ordered Petitioner to file documentary evidence to support her claim. (Notice of Docketing, p. 2.) The Notice of Docketing stated that "Petitioner shall file documentary evidence to prove that all or part of the alleged debt is either unenforceable or not past due. This documentary evidence may be attached to a short petition supported, where necessary, by affidavit setting forth Petitioner's contentions and relevant legal argument."

(emphasis in original) (*Id.*) This Office also ordered Petitioner to file documentary evidence in support of her position on January 6, 2011.

Petitioner failed to respond to both the October 20, 2010 and January 6, 2011 Orders, and is therefore subject to the sanctions set forth at 24 C.F.R. §26.4(a)<sup>1</sup> and 24 C.F.R. § 26.4(c)<sup>2</sup>. 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 failed to comply with the Orders issued by this Office. Since Petitioner does not offer any evidence to support her claim that she does not owe the debt in this case or that administrative wage garnishment in the 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 \$117.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards.



---

H. Alexander Manuel  
Administrative Judge

February 28, 2011

---

<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 . . .”