

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

In the Matter of:

Marites Lara,

Petitioner

19-VH-0191-AG-052

721008739

October 22, 2020

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (*Hearing Request*) filed on August 23, 2019, by Petitioner Marites Lara (“Petitioner”) concerning the existence, amount, or enforceability of the payment schedule of the debt allegedly owed to the United States Department of Housing and Urban Development (“HUD” or “the Secretary”).

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 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. § 17.81. The Secretary bears the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner 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 any proposed 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.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on August 26, 2019, this Court stayed the issuance of a wage garnishment order and ordered HUD to suspend any existing withholding order until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (*Notice of Docketing*) at 2. On October 24, 2019, the Secretary filed his *Statement* (*Sec’y Stat.*) along with documentation in support of his position. Petitioner has failed to submit documentary evidence in support of her position in response to the *Notice of Docketing* or the Court’s subsequent *Order for Documentary Evidence* issued on December 12, 2019. This case is now ripe for review.

BACKGROUND

This alleged debt resulted from a defaulted loan which was insured against non-payment by the Secretary.

In November 2014, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure on her mortgage with her primary lender. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender, which was the holder of Petitioner's primary mortgage note. *Sec'y Stat.*, ¶ 3. On November 8, 2014, in exchange for these funds, Petitioner executed and delivered to the Secretary a subordinate note ("Note") in the amount of \$69,897.10. *Sec'y Stat.*, ¶ 3; Ex. 1, Declaration of Brian Dillon,¹ (*Dillon Decl.*), ¶ 4.

Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. *Sec'y Stat.*, Ex. 2, Note, ¶ 2. The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was the termination of the FHA mortgage insurance on Petitioner's primary mortgage. *Sec'y Stat.*, ¶ 4; Ex. 2, ¶ 4(A)(iii).

On or about October 29, 2015, the FHA mortgage insurance on Petitioner's primary mortgage was terminated by the lender. *Sec'y Stat.*, ¶ 5; Ex. 1, *Dillon Decl.*, ¶ 4. This event required Petitioner to pay the full amount owed under the Note to HUD. HUD, thereafter, made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. *Sec'y Stat.*, ¶ 6; Ex. 1, *Dillon Decl.*, ¶ 5. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$45,959.69 as the unpaid principal balance as of August 29, 2019;
- b) \$37.12 as the unpaid interest on the principal balance at 1% per annum through August 29, 2019; and
- c) interest on said principal balance from August 30, 2019 at 1% per annum until paid.

Sec'y Stat., ¶ 7; Ex. 1, *Dillon Decl.*, ¶ 5.

On March 22, 2017, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner's last known address. *Sec'y Stat.*, ¶ 8; Ex. 1, *Dillon Decl.*, ¶ 6. Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was, at that time, given an opportunity to enter into a written repayment agreement with HUD, but Petitioner failed to do so. *Sec'y Stat.*, ¶ 9; Ex. 1, *Dillon Decl.*, ¶ 7. Petitioner submitted a voluntary payment of \$500 to the U.S. Department of the Treasury ("Treasury") on March 8, 2017, but as Treasury had not agreed to accept less than the full amount of the delinquent debt, a Wage Garnishment Order was issued to Petitioner's employer on May 9, 2017. *Sec'y Stat.*, Ex. 1, *Dillon Decl.*, ¶¶ 8-9.

¹ Brian Dillon is Director of the Asset Recovery Division of HUD's Financial Operations Center.

Pursuant to the issuance of the Wage Garnishment Order, Petitioner's pay has been garnished fifty-six times in an amount totaling \$27,916.37, which is reflected in the amounts claimed by HUD. *Sec'y Stat.*, Ex. 1, *Dillon Decl.*, ¶ 10. The amounts claimed by HUD also reflect Treasury's collection of three administrative offset payments from Petitioner, totaling \$15,990.00. *Sec'y Stat.*, Ex. 1, *Dillon Decl.*, ¶ 11.

In the *Hearing Request*, Petitioner provided a copy of her biweekly pay statement for the pay period ending on May 25, 2019. The pay statement indicates that Petitioner's gross pay for the pay period totaled \$4,535.67, with allowable deductions totaling \$1,065.25, resulting in a net disposable biweekly income of \$3,470.42. The Secretary's proposed repayment schedule is \$520.56 biweekly, or an amount equal to 15% of Petitioner's disposable biweekly income. *Sec'y Stat.*, ¶ 12; Ex. 1, *Dillon Decl.*, ¶ 12.

DISCUSSION

Petitioner does not claim that the subject debt is invalid or unenforceable but instead claims that the wage garnishment imposed should cease to avoid repercussions of the same on her reputation at work. Petitioner also offers, as an alternative, a repayment plan to settle the subject debt.

In the *Hearing Request*, Petitioner requests that the administrative wage garnishment be discontinued as an automatic deduction from her wages so that she can be allowed to repay the debt via deductions from her debit card account. Petitioner further states that "she prefers this alternative arrangement because she does not want administrative wage garnishment to tarnish her employment record and she fears it may result in loss of employment in the future." *Hearing Request* at 1. 31 C.F.R. § 285.11(m) provides however that, "no employer may discharge, fail to hire, or otherwise take any disciplinary action against an employee or applicant because of a wage garnishment order." As a result, there should be no basis for concern for Petitioner that the wage garnishment order currently imposed would constitute grounds for legally discharging Petitioner from her employment.


With regard to Petitioner's alternative payment plan, Petitioner may wish to negotiate repayment terms with the Department instead of the Court because negotiation of any offers for settlement are beyond the scope of the Court's jurisdiction. This Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. But Petitioner may wish to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner also may request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, the Order imposing the stay of referral August 26, 2019 of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 15% of Petitioner's disposable biweekly income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge