

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

In the Matter of:

BRANDY GALLOWAY,

Petitioner.

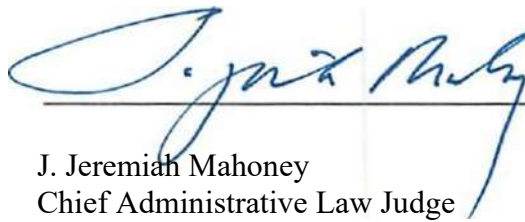
20-AM-0269-AG-169
(Claim No. 721016915)

November 28, 2023

NOTICE OF TRANSFER

Due to the retirement of Administrative Judge H. Alexander Manuel, the above-captioned matter is reassigned to Administrative Law Judge Alexander Fernández-Pons for adjudication in accord with applicable statutes and regulations.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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REVISED AND CORRECTED DECISION AND ORDER

This *Revised and Corrected Decision and Order* wholly replaces the *Decision and Order* dated April 28, 2023, which, due to an administrative oversight, is vacated. The findings discussed below are in line with the facts and the law governing this matter.

On or about August 4, 2020, Brandy Galloway (“Petitioner”) filed a *Request for Hearing* (“Request”) 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 this 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

Petitioner procured an FHA-insured mortgage to purchase a home (“Primary Note”). On June 13, 2016, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$82,842.55. The funds secured by the Subordinate Note were paid by the Secretary to the lender to bring Petitioner’s payments associated with the Primary Note current to prevent foreclosure.

The terms of the Subordinate Note included Petitioner’s promise to pay which was secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Subordinate Note. The Subordinate Note requires payment (see “Manner of Payment”) on or before June 1, 2046, or when the first of the following events occur:

- 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;
- 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.

In or around June 2019, Petitioner filed for bankruptcy and sold her home. Accordingly, the FHA mortgage insurance was terminated on the associated mortgage because the Primary Note was paid in full. However, Petitioner did not repay the Secondary Note as required. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$82,842.55 as the unpaid principal balance as of October 31, 2020;
- ii. \$1,104.80 as the unpaid interest on the principal balance at 2% per annum through October 31, 2020;
- iii. \$5,055.98 as the unpaid penalties and administrative costs as of October 31, 2020; and
- iv. interest on said principal balance from November 1, 2020, at 2% per annum until paid.

A “*Notice of Intent to Initiate Administrative Wage Garnishment Proceedings*” (“Notice”) dated July 22, 2020, was sent to Petitioner at her last known address. 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. Petitioner has not entered into a written repayment agreement.

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* together with the Declaration of Brian Dillon and a copy of the Subordinate Note signed by Petitioner and her spouse. Petitioner does not deny she undertook the debt. Rather, she states she was under the impression that the debt cleared after she filed for bankruptcy or, if not cleared at that time, was paid off when she sold the home. In support of her contention, Petitioner submits a letter from her primary lender stating that her loan was paid in full, as well as the results of a title search Petitioner represents as indicating no outstanding liens pertaining to HUD.

The express language of the Subordinate Note, signed and agreed to by Petitioner, states under borrower’s “Promise to Pay,” that, “In return for a loan received from Lender, Borrower promises to pay the principal sum of eighty two thousand eight hundred forty two and 55/100

Dollars (U.S. \$ 82,842.55), to the order of the Lender.”¹ The Subordinate Note also expressly directs Petitioner to make payment to the Office of Housing FHA-Comptroller in Washington, D.C. Put simply, Petitioner remains responsible for the debt because the debt was not absolved, paid off, or released as a result of Petitioner’s bankruptcy proceeding or upon the sale of the home. Further, the debt could not have been absolved, paid off, or released through the bankruptcy proceeding or upon the sale of the home because the Secretary, to whom the debt is owed, was not a party in either matter. In the absence of a release from HUD discharging Petitioner from her obligation to repay the debt, she remains indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 3 (December 8, 2008) (“for Petitioner not to be held liable for the debt, there must either be a release in writing from the lender ... or valuable consideration accepted by the lender from Petitioner”) (citations omitted). Thus, the debt is legally enforceable and past due.

Petitioner claims the Secretary’s proposed garnishment would cause her financial hardship. In order 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.” Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985).

In support of her claim, Petitioner submits copies of her pay stub and her spouse’s pay stub, as well as a Consumer Debtor Financial Statement signed by her and her spouse under penalty of perjury. In her Financial Statement, Petitioner lists three dependent children and the following monthly household expenses: \$2,395 (rent), \$1,588 (car payments), \$1,200 (food), \$450 (cellular service, utilities), \$350 (clothing), \$255 (television), \$251 (trash), \$230 (gasoline, auto repairs), \$200 (electricity), \$180 (natural gas), and \$25 (out-of-pocket medical expenses).² Petitioner also lists monthly payments totaling \$3,257 to service consumer and credit card debts and a debt owed to the Internal Revenue Service.

Petitioner provides no proof of her necessary household expenses. Further, Petitioner failed to do so in response to the Court’s April 7, 2023, *Order to Show Cause Why This Case Should Not Be Dismissed* (“Order to Show Cause”).³ Thus, where there is insufficient documentation, credit may only be given for certain essential subsistence expenses that are found to be generally credible. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012). Accordingly, Petitioner’s expenses for rent, car, food, cellular service, clothing, trash, gas and car repairs, electricity, natural gas, and medical expense are found to be essential. However, many of those expenses are also found to be excessive. Therefore, Petitioner’s expenses for car

¹ Petitioner states that the Department of Treasury (“Treasury”) has significantly increased the balance of the debt. HUD is required to charge Petitioner interest, administrative costs, and penalties. See 31 U.S.C. §§ 3717(a) and (e)(1)-(2). Administrative costs include a fee charged by Treasury. See 31 U.S.C. § 3711(g). Such fees are Petitioner’s responsibility until the debt is paid in full.

² Petitioner lists one of her three dependent children as being of majority age. As Petitioner provides no evidence to support that the child is indeed a dependent, the child is discounted from the Court’s analysis.

³ The Order to Show Cause also required Petitioner to submit evidence of involuntary separation from her employment based on an April 22, 2020, letter from Evergreen Market that Petitioner attached to her Request. Upon further review, Evergreen Market involuntarily separated Petitioner’s spouse. Thus, the issue of Petitioner’s involuntary separation has been rendered moot.

payments, food, cellular service and utilities, clothing, and trash are reduced \$500, \$600, \$150, \$100, and \$50 per month, respectively for the purpose of the Court's analysis.

A review of Petitioner's essential monthly expenses reveals that the Secretary's proposed garnishment repayment schedule will not cause Petitioner financial hardship. Specifically, deducting Petitioner's essential monthly expenses (totaling \$4,430) plus the proposed 15% garnishment from her monthly disposable pay (\$9,907) leaves Petitioner with approximately \$3,990 per month. Accordingly, the Secretary may garnish Petitioner's disposable pay as proposed.

Should Petitioner wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.⁴ Petitioner is entitled to seek reassessment the repayment schedule in the future in the event that he experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month. It is

⁴ The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached at 1-888-826-3127.

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

SO ORDERED,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.11.28 12:14:21 -05'00'

Alexander Fernández-Pons
Administrative Law Judge

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.).