

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

In the Matter of:

Robert Vasquez,

Petitioner.

20-VH-0001-AG-001

9640717

September 23, 2021

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hearing Request*”) filed on or about October 11, 2019, by Petitioner Robert Vasquez (“Petitioner”) concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”).

JURISDICTION

The Office of Hearings and Appeals has been designated to adjudicate contested cases where the Secretary seeks to collect the subject 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.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on October 15, 2019, the Court stayed the issuance of a wage garnishment order until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) at 2. On December 4, 2019, the Secretary filed his *Statement* (“*Sec’y. Stat.*”), along with documentary evidence in support of his position. Petitioner filed documentary evidence on October 10, 2019 and August 25, 2020. (“*Petr.’s Stat.*”) This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”). On or about September 12, 2002, Robert Vasquez (“Petitioner”) and Thelma Vasquez executed a Manufactured Home Retail Installment Contract (“Note”) in the amount of \$36,337.69.

The Note was insured against nonpayment by Secretary pursuant to Title I of the National Housing Act. *Secretary's Statement (Sec'y. Stat.), Declaration of Brian Dillon*¹(*Dillon Decl.*), Exhibit 2.4, ¶ 3. The Petitioner defaulted on the Note by failing to make payments as agreed in the Note, and the Note was subsequently assigned to HUD pursuant to the regulations governing the Title I Insurance Program. *Sec'y. Stat., Dillon Decl. Exhibit 2*, ¶ 3.5. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Dillon Decl. Exhibit 2*, ¶ 4.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$16,616.66 as the unpaid principal balance as of October 17, 2019;
- b. \$13.84 as the unpaid interest on the principal balance at 1% per annum through October 17, 2019;
- c. \$835.35 as the unpaid penalties and administrative costs as of October 30, 2019; and
- d. Interest on said principal balance from October 18, 2019 at 1% per annum until paid.

Dillon Decl. Exhibit 2, ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated March 1, 2019, was mailed to Petitioner's last known address. *Dillon Decl. Exhibit 2*, ¶ 5.8.

In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD. However, to date, Petitioner has not entered into any such agreement. *Dillon Decl. Exhibit 2*, ¶ 5.9.

The Secretary proposes a repayment schedule of \$485.16 per month, which will liquidate the debt within three years as recommended by the Federal Claims Collection Standards, or fifteen percent of Petitioners' disposable pay. *Dillon Decl. Exhibit 2*, ¶ 7.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner disputes the terms of the proposed repayment schedule and asserts that administrative wage garnishment would cause financial hardship. *Request for Hearing* ¶ 6.

While financial hardship does not invalidate a debt or release a debtor from the obligation to pay, financial hardship factors are relevant in determining the amount of administrative garnishment that will be allowed. See Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986); See 31 C.F.R. §§ 285.11(f)(2) and (k)(3). In support of Petitioner's claim, he must prove with particularized evidence that the proposed terms of debt repayment would cause financial hardship. 31 C.F.R.285.11(k)(3); 31 C.F.R.285.11(f)(8)(ii); Ray Jones, HUDAJF 84-1-OA (March 27, 1985). In order to establish credibility of Petitioner's financial hardship claim, the Court must first determine Petitioner's monthly disposable income and, thereafter, review the evidence Petitioner submitted, if any, that supports the alleged expenses.

¹ Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

Disposable income is that part of Petitioner's compensation that remains after the deduction of health insurance premiums and other amounts required by law to be withheld. Such deductions include social security taxes and withholding taxes, but not amounts withheld pursuant to court order. *See* 31 C.F.R. § 285.11 (c). In this case, Petitioner earns a monthly income of \$2858.64 after deductions, while Petitioner's spouse earns an additional monthly income after deductions of \$3429.41. As a result, the combined disposable income for the household totals \$6288.05.

Petitioner offered as evidence of hardship copies of his *Consumer Debt Financial Statement* listing the monthly bills and expenses for the household; certain selected monthly statements for mortgage, waste disposal, utilities, cable/internet, and personal loans; and copies of a series of credit card statements reflecting payments due. *Hearing Request* dated October 10, 2019. Although Petitioner's credit card statements reflected outstanding balances, such statements did not itemize with particularity the essential expenses that were paid by the credit cards. See Bonnie Walker, HUDBCA No. 95-G-NY-T300. (July 3, 1996).

The essential expenses presented along with statements included: mortgage, \$1986.28; internet service, \$64.96; waste disposal, \$137.26; American Insurance, \$17.33; cell phone, \$100; Two Chrysler car payments, \$617.12 and \$866.92; Nueces Electric bill, \$312.51; and USAA Insurance, \$256.82 which together totaled \$4,359.20. *Id.* In addition, Petitioner listed non-essential expenses that the Court has determined will not be included as essential: Hulu, \$59.53; Netflix, \$15.14; and Napster, \$10.81 that together totaled \$85.48. *Id.* Petitioner also submitted credit card statements for Visa, Home Depot, CareCredit, Fingerhut, Sears, Capital One, Sunoco, Citi Card, and Tractor Supply, all of which failed to itemize, with specificity, household expenses that were paid by these credit cards. As a result, the Court was unable to determine whether certain expenses paid by credit card were essential. The statements Petitioner provided only reflected payments due and nothing more. Based on the evidence presented and substantiated, Petitioner's monthly household expenses remain at \$4,359.20.

As noted earlier, the combined disposable income in this case of \$6288.05, less essentials per month of \$4,359.20, would yield a monthly balance of \$1928.85. *Pet'r's. Statement, Attachments.* The proposed monthly garnishment amount presented by the Secretary of \$485.16 would further reduce Petitioner's combined disposable income to \$1443.69 per month. The remaining balance of \$1443.69 could reasonably cover any other monthly miscellaneous bills and non-essentials for their household. Therefore I find that Petitioner's claim of hardship fails for lack of proof.


With regard to Petitioner's offer for a repayment 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. Petitioner may wish to discuss this matter with Counsel for the Secretary or the Director of HUD's 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 his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter on October 10, 2019 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 of \$485.16 per pay month.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.