

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

In the Matter of:

Jeffrey L. Hunt,

Petitioner

21-VH-0081-AG-045

2010027825B

May 6, 2022

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on March 10, 2021, by Petitioner Jeffrey L. Hunt (“Petitioner”) concerning the existence, amount, or enforceability of the payment schedule of the debt allegedly owed to the U.S. 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 has 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 March 17, 2021, this 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 April 15, 2021, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of her position. On August 12, 2021, Petitioner then filed, in addition to his *Hearing Request*, a *Supplemental Statement* along with documentary evidence in response to the Secretary’s *Statement*. 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 March 20, 2002, Jeffrey Hunt (“Petitioner”) executed a Retail Installment Contract (“Note”) in the amount of \$13,893.00 which was insured against nonpayment by Secretary pursuant to Title I of the National Housing Act. *Secretary’s Statement (Sec’y. Stat.), Ex A, Declaration of Rene Mondonedo*¹(*Mondonedo Decl.*).¹ Logan Laws was defaulted as an issuer of Mortgage-Backed Securities (“MBS”) due to its failure to comply with the Government National Mortgage Association’s (“GNMA’s”) MBS program requirements. Upon default by Logan Laws., all of its rights, title, and interest in Petitioner’s loan were assigned to GNMA by virtue of the Guarantee Agreement entered into between Logan Laws and GNMA. *Sec’y. Stat., Ex. B Mondonedo Decl.* ¶ 4.

As GNMA (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. *Id.* at ¶ 5. Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$8,663.55 as the unpaid principal balance; and
- (b) \$3,844.68 as the unpaid interest on the principal balance through March 30, 2021;
- (c) \$947.77 in administrative fees;
- (d) \$17.09 in Assessed Penalty Fee; and,
- (e) 2% interest on said principal balance until paid.

Sec’y. Stat., Ex. B Mondonedo Decl., ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated February 10, 2021, was sent to Petitioner. 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 under mutually agreeable terms. To date, Petitioner has not entered into a written repayment agreement. *Id.* at ¶7 & ¶8.

¹ Rene Mondonedo is the Director of Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”) within the United States Department of Housing and Urban Development (“HUD”).

As a result of Petitioner's failure to pay the subject debt in a timely manner or enter into a repayment agreement, the debt was referred to Treasury for collection. Once the debt was referred to Treasury, the administrative fees became due and owing.

Based on the foregoing, GNMA proposes a garnishment amount of 15% of Petitioner's disposable pay. The Secretary respectfully requests that the Court find Petitioner's debt past due and legally enforceable, and the Secretary's proposed repayment schedule fair. *Sec'y. Stat.*, ¶16.

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 the administrative wage garnishment would cause financial hardship for him.

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 that might create a financial hardship.

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 \$2680.64 after deductions. As a result, his monthly disposable income for the household totals \$2680.64.

Petitioner offered as evidence of hardship copies of his *Statement* listing the monthly bills and expenses for the household which consisted of copies of certain selected monthly statements for Petitioner's Rent to Own monthly payment, electricity bills, and auto and home improvement loans. Together these expenses totaled \$1713.00. Petitioner also requested that the Court consider an estimated allotment for essential monthly household expenses that would cover food and gasoline per month. *Petitioner's Answer and Exhibits* dated August 12, 2021. At approximately 8% of Petitioner's disposable income towards food and gasoline, he would average spending approximately \$400.00 per month for these expenses. Based on the evidence presented and calculated, Petitioner's monthly household expenses total at \$2113.00.

Petitioner's monthly disposable income noted earlier of \$2680.64, less his monthly expenses of \$2113.00, would yield a remaining balance per month of \$567.64. The proposed monthly garnishment amount presented by the Secretary at 15% of Petitioner's disposable income would yield \$402.00 per month and would further reduce Petitioner's disposable income to

\$165.64 per month, a remarkably low remaining balance that likely would be insufficient to cover any additional miscellaneous expenses Petitioner might incur by month's end.


Upon due consideration of the record, the Court finds that Petitioner has met his burden of proof by a preponderance of the evidence by proving that the administrative wage garnishment of his disposable pay, in the amount sought by the Secretary, would create a financial hardship. To impose an administrative wage garnishment against the Petitioner, at any rate, would be ineffective and unproductive at this time.

While the Secretary has successfully established that the subject debt is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner's disposable income would, at this time, constitute a financial hardship sufficient enough to forego collection.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time. However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or his expenses for necessities are reduced.

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.