

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

In the Matter of:

**Arletha Smith,**

Petitioner

21-VH-0096-AG-057

0691022

November 10, 2022

**DECISION AND ORDER**

On March 16, 2021, Arletha Smith (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”). 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 allegedly owed to the United States government.

**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 pursuant to 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 withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On June 8, 2021, the Secretary filed her *Statement* along with documentation in support of her position. To date, Petitioner has failed to file sufficient documentary evidence in support of his claim of financial hardship, or in response to the orders issued by this Court. This case is now ripe for review.

**FINDINGS OF FACT**

This debt collection action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D.

On March 10, 1995, Petitioner, Arletha Smith, executed and delivered a Retail Installment Contract (“Note”) to Oakwood Mobile Homes, Inc., in the amount of \$22,170.40, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). *Secretary’s Statement*, (*Sec’y. Stat.*), ¶ 2, Ex. A, Note. Contemporaneously, the Note was assigned to Oakwood Acceptance Corporation (“Oakwood.”) *Sec’y. Stat.*, ¶ 2, Ex. A, Note at 4.

On May 4, 1995, Oakwood assigned the Note to the Government National Mortgage Association (“GNMA”), a division of HUD. *Sec’y. Stat.*, Ex. C, ¶ 3, Declaration of Rene Mondonado (*Mondonado Decl.*)<sup>1</sup> at ¶ 4. 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:<sup>2</sup>

- (a) \$4,524.14 as the unpaid principal balance;
- (b) \$500.22 as the unpaid interest on the principal balance through May 25, 2021;
- (c) \$0 in administrative fees; and,
- (d) 2% interest on said principal balance until paid.

*Sec’y. Stat.*, Ex. C, ¶ 6, *Mondonado Decl.*, at ¶ 6.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated February 12, 2021, was sent to Petitioner. *Sec’y. Stat.*, Ex. C, ¶ 6, *Mondonado Decl.*, at ¶ 7. 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. *Sec’y. Stat.*, Ex. C, ¶ 6, *Mondonado Decl.*, at ¶ 7.

The Secretary is requesting that the Court find Petitioner’s debt is past due and legally enforceable and find that the Secretary should be authorized to seek collection of the subject debt by means of administrative wage garnishment at 15% of Petitioner’s disposable pay.

### **DISCUSSION**

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims in her *Hearing Request* that the proposed garnishment amount would create a financial hardship.

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would

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<sup>1</sup> Rene Mondonado is the Director of the Mortgage-Backed Securities Monitoring Division of the Government National Mortgage Association (“Ginnie Mae”).

<sup>2</sup> These figures do not include fees assessed by the U.S. Department of the Treasury to service the debt on HUD’s behalf.

create a financial hardship. In a case involving a claim of financial hardship, Petitioner “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 (March 27, 1985).


Herein, Petitioner only submitted a *Hearing Request* without introducing any documentary evidence since March 2021 to support her position. Petitioner also failed to produce such evidence in compliance with the Court’s Order. Without a record of evidence from the Petitioner that either refutes or rebuts what the Secretary has presented, the Court is unable to assess the credibility of Petitioner’s hardship claim.

This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). In the absence of documentary evidence that supports Petitioner’s position, the Court finds Petitioner’s financial hardship claim fails for lack of sufficient proof and that Petitioner remains contractually obligated to pay the subject debt claimed by the Secretary.

As a final point, should Petitioner maintain to date that the proposed garnishment amount presents a financial hardship for her, she may request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142) or Petitioner may want to discuss this matter with Counsel for the Secretary or the Director of HUD’s Financial Operations Center at 52 Corporate Circle, Albany, NY 12203-5121 who may be reached at 1-800-669-5152, extension 2859.

### **ORDER**

Based on an assessment of the existing record, the Order imposing the stay of referral 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 of 15% of Petitioner’s monthly disposable pay.

SO ORDERED.  
  
Vanessa L. Hall  
Administrative Judge

**Review of determination by hearing officers.** A motion for reconsideration of the 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.