

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

In the Matter of:

Jason and Danielle Luke,

Petitioner

21-VH-0230-AG-133

721017526

January 10, 2023

DECISION AND ORDER

On August 16, 2021, Petitioners 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 owed to the United States Government.

Applicable Law

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(1) (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(1) (4), on August 19, 2021, the Court stayed referral of the debt to the U.S. Department of the Treasury until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral ("Notice of Docketing")*. On October 19, 2021, the Secretary filed her *Statement* along with documentation in support of her position. On April 10, 2022, and later on December 15, 2022 in response to the Court's *Order for Clarification*, Petitioners filed additional documentary evidence in support of their position. 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”) pursuant to 31 U.S.C. § 3720D.

In order to provide foreclosure relief, HUD advanced funds to the FHA insured lender to bring the Petitioners’ mortgage current. On June 21, 2013, Jason and Danielle Luke, executed and delivered a Subordinate Note (“Note”) to HUD in the amount of \$87,536.28. *Secretary’s Statement* (*Sec’y’s Stat.*) ¶ 2, Ex. A, Note). The Note cited specific events making the debt become due and payable, including when all amounts due under the primary note and related mortgage are paid in full, and when the Note is no longer insured by HUD. *Id.* at ¶ ¶ 4(A)(i) & (iii)); *Sec’y’s Stat.*, ¶ 3, Ex. B., *Declaration of Brian Dillon* (*Dillon Decl.*)¹ at ¶ 4).

On or about March 11, 2020, the FHA insurance on the primary mortgage was terminated as the lender indicated that the mortgage was paid in full. *Sec’y’s Stat.*, ¶ 4, Ex. B., *Dillon Decl.* at ¶ 5. Upon the full payment of the primary note, the subordinate note became due and payable. *Sec’y’s Stat.*, ¶ 5, Ex. A at ¶ 4(A)(i)). Upon the termination of the FHA insurance on the primary mortgage, the subordinate note became due and payable. *Sec’y’s Stat.*, ¶ 6, Ex. A, Note, at ¶ 4(A)(iii)).

Petitioner failed to make payment on the Note at the place and in the amount specified. Consequently, Petitioner’s debt to HUD is delinquent. *Sec’y’s Stat.*, ¶ 7, Ex. A, Note at ¶ 4(B)). 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:¹

- (a) \$87,536.28 as the unpaid principal balance as of 9/30/2021;
- (b) \$583.36 as the unpaid interest on the principal balance at 1.0% per annum through 9/30/2021;
- (c) \$5,321.96 as the unpaid penalties and administrative fees through 9/30/2021; and
- (d) 1% interest on said principal balance from 10/1/2021 until paid.

Sec’y’s Stat., ¶ 8, Ex. B, *Dillon Decl.* at ¶ 5.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated July 5, 2021, was sent to Petitioners. *Sec’y’s Stat.*, ¶ 9, Ex. B, *Dillon Decl.* at ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioners were afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. To date, Petitioners have not entered into a written repayment agreement. *Sec’y’s Stat.*, ¶ 10, Ex. B, *Dillon Decl.* at ¶ 7).

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

On October 5, 2021, Petitioners provided evidence regarding their current finances. HUD reviewed the financial information provided by the Petitioners including a Financial Statement with addendum, current paystubs, copies of various bills, and bank statements. HUD collected this information from the Petitioners over several months and reviewed all additional information provided. *Sec'y's Stat.*, ¶ 15, Ex. B, *Dillon Decl.* at ¶ 9).

Petitioner Jason Luke's biweekly gross salary is \$4,339.38. Less allowable deductions of \$1,228.73, Petitioner's biweekly net disposable pay equals \$3,110.65. Administrative Wage Garnishment of 15% of Petitioner's disposable pay equals \$466.60 biweekly. Therefore, the Secretary's proposed repayment schedule is \$466.60 biweekly, or 15% of Petitioner's disposable pay. *Sec'y's Stat.*, ¶ 16, Ex. B, *Dillon Decl.* at ¶ 10.

Petitioner Danielle Luke's biweekly gross salary is \$1,600. Less allowable deductions of \$238.77, Petitioner's biweekly net disposable pay equals \$1,361.23. Administrative Wage Garnishment of 15% of Petitioner's disposable pay equals \$204.18 biweekly. Therefore, the Secretary's proposed repayment schedule is \$204.18 biweekly, or 15% of Petitioner's disposable pay. *Sec'y's Stat.*, ¶ 17, Ex. B, *Dillon Decl.* at ¶ 10.

The Secretary respectfully requests that the Court find Petitioners' debt past due and legally enforceable, and the Secretary's proposed repayment schedule fair.

DISCUSSION

Petitioners do not dispute the existence of the debt or the amount. Rather, Petitioners claim that the proposed garnishment amount will cause severe financial hardship. *Petitioners Hearing Request (Hr g. Req.)* filed August 16, 2021, *Petitioner's Documentary Evidence (Pet'r's Doc. Evid.)* filed April 10, 2022 and December 15, 2022). More specifically Petitioner states, **Addendum - Please read Judge Hall!! *Please see highlighted areas on bank statements for proof of monthly payments. *This is a list of all our bills PLUS those incidentals that may happen at ANY GIVEN TIME during the month or year. *Please be respectful when thinking about expenses that happen off this list that may be out of our control (i.e. emergency expenses such as medical, glasses, vet, major appliance replacement).**" *Id.* (*Emphasis in original*)

In order to show financial hardship, Petitioners "must submit 'particularized evidence,' including proofs of payment, showing that they 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). As support for their claim of financial hardship, Petitioners provided documentary evidence for the Court's review that included recent pay statements, credit card and loan statements, proofs of payment for essential household expenses and other additional proofs of payment for non-essential, but relevant, living expenses. *Pet 'rs Doc. Evid.* Upon a careful examination of the evidence presented, the Court finds that the Petitioners have met their burden of proof for financial hardship.

As a general rule, financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). But 24 C.F.R. § 285.11(k)(3) provides that if financial hardship is found this Court may downwardly adjust the garnishment amount to reflect the debtor's financial condition. When considering a claim

of financial hardship, the Court reviews the Petitioner's disposable income, alleged monthly expenses, and supporting documentation.

Disposable income is defined as "that part of the debtor's compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes." 31 C.F.R. § 285.11(c). When calculating the final monthly disposable income, the Court must also consider which essential monthly living and household expenses should be deducted. Payments for essential monthly household expenses are considered against the disposable income figure before determining financial hardship. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05 (January 20, 2012).

Based on Petitioners' pay statements, they earn a combined gross monthly income of \$16,283.76 (Jason, \$4577.17 bi-weekly gross; Danielle, \$3564.71 bi-weekly gross). Their combined monthly deductions for federal income tax; social security; retirement; state tax; Medicare; medical insurance and additional required deductions yield an average deduction total of \$5596.32. After subtracting Petitioners' required deductions from their gross monthly income of \$16,283.76, their monthly disposable income total is \$10,687.44.

Petitioners claim certain monthly household, family, and living expenses as eligible for consideration, all of which are supported by proofs of payment on a monthly basis for the following: mortgage; auto, home, pet, and life insurance; utility bills for water/sewer and electricity; internet and cell phone service; consumer loans; student loans; physical therapy and mental health counseling; medical bills for the entire family; groceries; and other miscellaneous work, home, and childcare expenses. *Pet 'rs Doc. Evid.*, Attachments.

Based on the evidence provided, Petitioners' monthly household expenses total is \$9498.00. After subtracting Petitioners' monthly expenses from their monthly disposable income of \$10,687.44, the remaining balance would be \$1189.44. At first glance this seems to be more than enough surplus funds by month's end. But the proposed repayment schedule sought by the Secretary from Petitioners at \$933.20 (\$466.60 bi-weekly, Jason) plus \$408.36 (\$204.18 bi-weekly, Danielle) together total \$1341.56. Based on this proposed repayment, Petitioners' month's end total would ultimately result in a negative balance of (-\$152.12) every month after deducting \$1341.56 from the \$1189.44 surplus. Without a surplus balance after garnishment to potentially use towards unexpected emergencies or other miscellaneous expenses, Petitioners would in fact suffer a financial hardship each month if the Court authorized the repayment plan at the current proposed rate of 15%.

While the Secretary has successfully established the enforceability of the subject debt against Petitioners, the Court finds that Petitioners have met their burden of proof by submitting sufficient documentary evidence to substantiate their claim that the proposed repayment schedule would constitute a financial hardship. 24 C.F.R. § 285.11(k)(3) provides that if a financial hardship is found, this Court may downwardly adjust the garnishment amount to reflect the debtor's current financial condition. Accordingly, I find that a wage garnishment at the rate of 5% of Petitioners' combined monthly disposable income would be sufficient based upon the evidence presented by Petitioners in this case, at least until proven otherwise.

As a final point, Petitioners presented to the Court a compromise payment arrangement of \$300.00 per month in order to repay the subject debt. Petitioner stated, “I want to be clear: We are NOT DISPUTING that we owe a debt. We agree we owe a debt, even though we did not know it was a debt at that time. That is not what is in question anymore. *The dispute is now coming up with a reasonable amount we should pay back each month to HUD for this debt. We would like to be able to all agree that a reasonable monthly repayment for HUD would be around \$300.*” Pet'r's Doc. Evid. (Emphasis in original).

The Court has rendered a decision that was based on a thorough review of the full context of the record of evidence -- a routine typically practiced by this Court. Because the parties did not object to the existence or enforceability of the subject debt and because Petitioners wanted to offer a settlement amount to resolve the debt, it is surprising to the Court that Petitioners failed to previously engage in settlement negotiations that perhaps could have resulted in a much earlier outcome between the parties. Explicitly stated in the Notice of Docketing issued by the Court on August 19, 2021 it reads:

The parties are encouraged to discuss among themselves settlement in this matter. If such discussions have not yet commenced or if such discussions have stalled, each party is reminded that pursuing this matter through hearing and possible appeals will require the expenditure of significant time and financial resources. The parties should realistically consider the risk of not prevailing in the proceedings despite such expenditures.

A settlement allows the parties to control the outcome of the case rather than have a decision made for them. **Accordingly, the parties are strongly encouraged to engage in settlement discussions and attempt to resolve this matter.** If at any time the parties seek the assistance of a settlement judge in this matter, please advise the Court of that fact, without elaboration. (Emphasis added.)

While the record reflects that Petitioners participated in several discussions with their bank, the U.S. Department of Treasury, and even a HUD representative, there is no record of Petitioners ever engaging in settlement negotiations with opposing counsel in this case as so encouraged in their Notice of Docketing. Again, such efforts could have, perhaps, yielded a much earlier resolution for the parties.


That aside, Petitioners opted to submit their *Hearing Request* appeal and documentary evidence with repeated requests for the Court to consider their repayment offer of \$300.00 per month to resolve the subject debt. While Petitioners may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer from a party on behalf of the Department because this Court is an independent tribunal. Petitioners may opt 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. Petitioners may also consider requesting a review of their financial status, should it become necessary in the future, 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 of this matter to the U.S. Department of the Treasury for administrative wage garnishment in the Notice of Docketing on August 19, 2021 is VACATED. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 5% of Petitioners' monthly disposable income.

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.