

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

In the Matter of:

Sandra S. May,

Petitioner

21-VH-0234-AG-136

780818313

February 8, 2023

DECISION AND ORDER

On August 18, 2021, Petitioner filed a hearing request, along with documentary evidence, 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.

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(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 in response filed her *Statement* along with documentation in support of her 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.

Sean May and Sandra S. May (“Petitioner”) executed a *Secured Note* (Note), dated March 16, 2017, in the principal amount of \$25,000.00. *Secretary’s Statement* (*Sec’y. Stat.*), ¶ 2; Ex. 1, Note. The Note was insured against nonpayment default by Secretary pursuant to Title I of the National Housing Act. *Sec’y. Stat.*, ¶ 3, Ex. 2, *Declaration of Brian Dillon* (*Dillon Decl.*), ¶ 3.

Petitioner defaulted on the Note by failing to make payments as agreed in the Note. The Note was subsequently assigned to HUD pursuant to the regulations governing the Title I Insurance Program. *Sec’y. Stat.*, ¶ 4, Ex. 2, *Dillon Decl.*, ¶ 3. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.*, ¶ 5, Ex. 2, *Dillon Decl.*, ¶ 4. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$22,966.61 as the unpaid principal balance as of July 31, 2021;
- b. \$602.91 as the unpaid interest on the principal balance at 1 % per annum through July 31, 2021;
- c. \$1,464.16 as the unpaid penalties and administrative costs through July 31, 2021; and
- d. interest on said principal balance from August 1, 2021 at 1 % per annum until paid.

Sec’y. Stat., ¶ 6, Ex. 2, *Dillon Decl.*, ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated July 5, 2021, was mailed to Petitioner’s last known address. *Sec’y. Stat.*, ¶ 7, Ex. 2, *Dillon Decl.*, ¶ 5. 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. *Sec’y. Stat.*, ¶ 8, Ex. 2, *Dillon Decl.*, ¶ 6.

Based upon Petitioner’s bi-weekly pay statement dated August 10, 2021, HUD proposes a wage garnishment repayment schedule in the amount of \$177.08 weekly, or an amount equal to 15% of Petitioner’s disposable income. *Sec’y. Stat.*, ¶ 10, Ex. 2, *Dillon Decl.*, ¶ 7. The Secretary requests a finding that the Petitioner's debt is past due and legally enforceable; and further seeks authorization of the proposed repayment schedule and that the stay of referral to the Department of the Treasury for collection by Administrative Wage Garnishment be vacated. Id.

DISCUSSION

Petitioner does not dispute the existence of the debt or the amount. Rather, she claims that the proposed garnishment amount will create a financial hardship for her. As support Petitioner offers along with her *Hearing Request* copies of her bi-weekly pay statements and household and utility bills. Id.

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 when raised, Petitioner "must submit 'particularized evidence' in order to show financial hardship. Such evidence includes proofs of payment showing that Petitioner 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).

When considering a claim of financial hardship, the Court reviews the Petitioner's disposable income, alleged household expenses, and other supporting documentation. Under 31 C.F.R. § 285.11(c), disposable income is defined as "that part of the debtor's compensation from the employer that remains after deduction of health insurance premiums and other amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes." The Court also considers a Petitioner's essential monthly living expenses when calculating the final monthly disposable income. Payments for essential monthly household expenses are considered against the disposable income figure prior to determining if a wage garnishment will create a financial hardship. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05 (January 20, 2012).

Based on Petitioner's pay statements, her gross monthly income is \$3,356.50. Her monthly deductions required by law are federal income tax, \$267.26; social security tax, \$185.34; state tax, \$138.92; Medicare, \$43.34; medical insurance, \$547.44, total \$1182.30. After deductions, Petitioner's monthly disposable income is \$2174.20.

Petitioner outlined the following essential household expenses month-to-month: rent, \$425.00; food, \$400; cell, \$85.00; gas/oil, \$180.00; electricity, \$42.14; and, Internet, \$69.99. The record sufficiently supports with documentation most of the figures listed as household expenses by Petitioner, but not all. However, in cases lacking sufficient documentation, this Court has previously held that credit may be given for certain household expenses deemed essential, even in the absence of documentation, when the "financial information submitted by Petitioner ... [was found to be] generally credible...." Reed, p. 4 (citing Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In this case, consistent with Reed, Petitioner provided sufficient financial information, so the Court has determined that the expenses identified by Petitioner qualify as essential household expenses that are generally credible based on the financial information provided. As a result, Petitioner's essential monthly expenses total \$1202.13.

After deducting Petitioner's total monthly expenses from her monthly disposable income of \$2174.20, Petitioner is left with a positive balance of \$972.07. At the Secretary's proposed garnishment rate of 15%, the garnishment amount would be \$652.26. Deducting the proposed garnishment amount from Petitioner's monthly balance of \$972.07 would yield a positive balance of approximately \$319.81. After further review and calculations, the Court has decided that authorization of the Secretary's proposed amount would create a financial hardship for Petitioner because the minimal balance at month's end would likely not sustain Petitioner on a monthly basis should miscellaneous or emergency expenses unexpectedly arise.

While the Secretary has successfully established the enforceability of the subject debt against Petitioner, the Court must find that Petitioner has met her burden of proof for financial hardship. 24 C.F.R. § 285.11(k)(3) provides that if a financial hardship is determined, the Court may downwardly

adjust the garnishment amount to reflect the debtor's current financial condition. Accordingly the Court will follow suit in this case and find that a wage garnishment at the rate of 10% of Petitioner's monthly disposable income of \$2174.20 more accurately reflects Petitioner's current financial state, until such time as Petitioner's financial state changes or otherwise improves.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury on August 19, 2021 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 equal to 10% of Petitioner's monthly disposable pay.

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.