

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

In the Matter of:

**Michele Fortenbaugh,**

Petitioner

21-VH-0242-AG-142

780817018

January 27, 2023

**DECISION AND ORDER**

On August 25, 2021, Michele Fortenbaugh (“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 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(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 September 1, 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 October 18, 2021, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed since the filing of her *Hearing Request* to file sufficient documentary evidence in support of her claims or in response to the Court’s Orders. This case is now ripe for review.

## **FINDINGS OF FACT**

This debt resulted either from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons.

Michele Fortenbaugh (“Petitioner”) and her husband, Randolph Fortenbaugh, obtained a Title I loan to rehabilitate their home on December 18, 2014 (the “Note”) from Ethic (f/k/a Admirals Bank f/k/a Domestic Bank). *Secretary’s Statement* (*Sec’y. Stat.*), ¶ 2; Ex. 2, Note. Following Petitioner’s default under the Note, Ethic assigned the Note to HUD on May 20, 2020. *Sec’y. Stat.*, ¶ 3, Ex. 1, *Declaration of Brian Dillon* (*Dillon Decl.*), ¶ 3. Thereafter, Petitioner’s husband entered into a repayment agreement with the Department of Treasury (“Treasury”). *Sec’y. Stat.*, ¶ 4, Ex. 1, *Dillon Decl.* ¶ 8.

Petitioner’s husband terminated that repayment agreement on September 16, 2021 because he was unable to afford the required payments. *Sec’y. Stat.*, ¶ 5, Ex. 1, *Dillon Decl.*, Ex. A. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$ 17,032.17 as the unpaid principal balance as of September 30, 2021;
- (b) \$ 586.80 as the unpaid interest on the principal balance at 1.0% per annum through September 30, 2021;
- (c) \$325.55 in unpaid penalties and administrative costs as of September 30, 2021
- (d) Interest on said principal balance from October 1, 2021 at 1.0% per annum until paid.

*Sec’y. Stat.*, ¶ 6, Ex. 1, *Dillon Decl.* ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment dated July 5, 2021 was sent to Petitioner. *Sec’y. Stat.*, ¶ 7, Ex. 1, *Dillon Decl.* ¶ 5. The Secretary’s proposed repayment schedule is biweekly payments of \$137.73 or 15% of her disposable pay. *Sec’y. Stat.*, ¶ 12. Based on the foregoing, the Secretary respectfully requests that the Court find Petitioner’s debt past due and legally enforceable and the Secretary’s proposed repayment schedule fair. *Id.*

## **DISCUSSION**

Petitioner claims in her *Hearing Request* that the proposed wage garnishment creates for her a financial hardship. Petitioner also alleges that a proposed repayment plan for the subject debt was already arranged for payment of this debt. To date, Petitioner has failed to produce evidence of hardship or the existence of a payment arrangement.

First, for the hardship claim Petitioner is required to show by a preponderance of the evidence, and pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of 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). Petitioner failed to present any documentary evidence as proof of the hardship so claimed. Based on a review of the record, Petitioner merely identifies hardship in her *Hearing Request* without offering documentary evidence as support, despite being ordered by the Court on September 1, 2021, February 15, 2022, and May 12, 2022 to produce the evidence necessary to demonstrate her financial state. Without evidence to substantiate Petitioner’s claims, the Court finds that Petitioner’s claim of financial hardship fails for lack of proof.

Next, as indicated previously, Petitioner alleges that a repayment plan is already in place for payment of the subject debt. More specifically, Petitioner states, “My husband (Randolph Fortenbaugh) who shares this debt with me has already set-up a payment plan for the 28<sup>th</sup> of each month - \$674.00. Unfortunately, we were under the impression that making those arrangements covered both of us (I believe he provided both of our incomes and liability information when making that arrangement).” The Secretary maintains however that “[b]ased on Treasury’s Wage Garnishment Order, Petitioner’s wages have been garnished once in the amount of \$137.73 on August 4, 2021.” *Sec’y. Stat.*, ¶ 8, Ex. 1, *Dillon Decl.* ¶ 7. “In her request for a hearing, Petitioner argues that her wages should not be garnished because she was party to a repayment agreement. That repayment agreement, however, has been terminated and, in any event, Petitioner has not submitted evidence to establish that she was party to that agreement.” *Sec’y. Stat.*, ¶ 9, Ex. 1, *Dillon Decl.* ¶ 8. The Court acknowledges for the record the positions of both parties with regard to a possible repayment arrangement, but this repayment arrangement is not a matter within the Court’s jurisdiction.

While Petitioner 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. Petitioner 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. Petitioner 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, Petitioner remains contractually obligated to pay the amount so claimed by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury on September 1, 2021 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 in an amount equal to biweekly payments of \$137.73 or 15% Petitioner's monthly disposable pay.

SO ORDERED.



Vanessa L. Hall  
Administrative Judge

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**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.