

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

In the Matter of:

DARLENE SMITH,

Petitioner.

22-AM-0106-AG-078
(Claim No. 721018262)

September 17, 2024

DECISION AND ORDER

On January 28, 2022, Darlene Smith (“Petitioner”) filed a *Hearing Request* (“*Request*”) seeking a hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

FINDINGS OF FACT

On March 8, 2018, Petitioner executed and delivered a HUD Note in favor of the Secretary in the principal amount of \$49,445.67. The funds secured by the HUD Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage (“Primary Mortgage”) current as a means of foreclosure relief.

The terms of the HUD Note included Petitioner’s promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the HUD Note. The HUD Note required payment on or before March 1, 2048, or when the first of the following events occurs:

- i. Petitioner has paid in full all amounts due under the Primary Note and related mortgage, deed of trust, or similar security instruments insured by the Secretary;
- ii. the maturity date of the Primary Note has been accelerated; or
- iii. the Primary Note and related mortgage, deed of trust, or similar security instrument are no longer insured by the Secretary.

On or about August 14, 2020, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. The total amount due now consists of:

- i. \$49,445.67 as the unpaid principal balance as of August 31, 2023;
- ii. \$1,029.75 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2023;
- iii. \$6,247.45 as the unpaid interest penalties and administrative costs as of August 31, 2023; and
- iv. interest on said principal balance from September 1, 2023, at 1.0% per annum until paid.¹

A "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated January 5, 2022, sent by the U.S. Department of Treasury on behalf of HUD was received by Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. See 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. See 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* together with the Declaration of Brian Dillon, Director of the Asset Recovery Division in HUD's Financial Operations Center, and a copy of the HUD Note signed and agreed to by Petitioner. The express language of the HUD Note states under "Borrower's Promise to Pay," that "[i]n return for a loan received from Lender, Borrower promises to pay the principal sum of forty[-]nine thousand four hundred forty five and 67/100 [d]ollars (U.S. \$49,445.67), to the order of the Lender." The HUD Note further states that payment will be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, Washington, D.C. Accordingly, the copy of the HUD Note submitted by HUD under oath establishes the existence and the amount of the debt owed by Petitioner.

In response, Petitioner provides a Recorded Satisfaction/Release of Lien from Flagstar Bank and a Release of Mortgage from Lakeview Loan Servicing as evidence the debt no longer exists. However, Petitioner's documents correspond with the Primary Mortgage on the property, not the promissory note in favor of HUD. There is also no evidence Petitioner received a release from HUD discharging her from the obligation to repay the debt. See In re Juanita Mason,

¹ If found liable for the debt, Petitioner may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6). Such fees may constitute 30% of the amount Petitioner allegedly owes HUD.

HUDOA No. 08-H-NY-AWG70, at p. 3 (December 8, 2008) (“... [F]or Petitioner not to be held liable for the debt, there must either be a release in writing from the lender... or valuable consideration accepted by the lender from Petitioner....”) (citations omitted). Thus, Petitioner has not refuted the evidence put forward by the Secretary and remains indebted to the Secretary for the full amount of the debt.

Petitioner also claims that the Secretary’s proposed garnishment would cause her financial hardship. In order for Petitioner to show financial hardship, she “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.” See Dominique Tozzi, HUDOA No. 23-VH-0054-AG-032 at 2 (Feb. 15, 2024) (quoting Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985)).

In support of her claim, Petitioner submitted a copy of her pay stub, as well as an unsigned Consumer Debtor Financial Statement. In her Financial Statement, Petitioner lists the following monthly household expenses: \$1950 (rent), \$400 (food), \$255 (electricity), \$220 (gas), \$296.84 (telephone), and \$548.63 (other).² However, those expenses are unsubstantiated. Where there is insufficient documentation, credit may only be given for certain essential subsistence expenses that are found to be generally credible. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012). Accordingly, rent, food, electricity, gas, and telephone expenses are found to be essential while expenses designated as “other” are discounted for lack of evidence proving the same. Therefore, the combined cost of her rent, electricity, gas, and telephone, without evidence supporting those costs, are found to be excessive for the locality in which she resides, and is reduced to \$2,247 for the purpose of the Tribunal’s analysis.³

A review of Petitioner’s essential monthly expenses reveals that the Secretary’s proposed garnishment payment schedule would cause Petitioner financial hardship. 24 C.F.R. § 285.11(k)(3) provides that if financial hardship is found this Tribunal may downwardly adjust the garnishment amount to reflect the debtor’s financial condition. Accordingly, Petitioner’s evidence shows that her monthly disposable pay is approximately \$2,416, but her monthly expenses amount to about \$2,647. Thus, any garnishment would leave Petitioner with a deficit. Therefore, the Secretary’s proposed garnishment repayment schedule of 15% of Petitioner’s disposable pay or any other garnishment amount is not appropriate at this time. See 31 C.F.R. § 285.11(k).

Even though the Secretary may not garnish Petitioner’s disposable pay at this time, Petitioner should be aware that interest will continue to accrue on the remaining debt until it is repaid. Should Petitioner wish to negotiate repayment terms with the HUD, this Tribunal is not

² Petitioner lists three dependents as being of majority age. As Petitioner provides no evidence to support that those listed are indeed dependents, they are discounted from the Tribunal’s analysis.

³ See Internal Revenue Service, *Collection Financial Standards* (Aug. 22, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD.⁴

ORDER

For the reasons set forth above, the Tribunal finds the subject debt to be legally enforceable against Petitioner in the amount claimed by the Secretary. However, Petitioner has demonstrated that any garnishment would cause her financial hardship. Accordingly, it is:

ORDERED that the Secretary is not authorized to seek administrative wage garnishment in any amount at this time. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment will **REMAIN IN PLACE** until garnishment of Petitioner's disposable pay is appropriate.

SO ORDERED,

ALEXANDER
FERNANDEZ-
PONS

Alexander Fernández-Pons
Administrative Law Judge

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
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Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 et seq.).

⁴ The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached at 1-888-826-3127.