

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

In the Matter of:

NICOLE SPENCER,

Petitioner.

22-AM-0132-AG-090
(Claim No. 721018426)

November 15, 2023

NOTICE OF TRANSFER

Due to the retirement of Administrative Judge H. Alexander Manuel, the above-captioned matter is reassigned to Administrative Law Judge Alexander Fernández-Pons for adjudication in accord with applicable statutes and regulations.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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DECISION AND ORDER

On January 22, 2022, Nicole Spencer (“Petitioner”) filed a *Request for 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 this 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 May 30, 2019, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$6,268.99. The funds secured by the Subordinate Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage current to provide foreclosure relief.

The terms of the Subordinate 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 Subordinate Note. The Subordinate Note required payment on or before June 1, 2046, or when the first of the following events occurs:

- i. borrower 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 June 30, 2020, the mortgage was paid in full, terminating the FHA insurance on the mortgage. However, Petitioner did not repay the full amount of the Subordinate Note as

required. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$2,538.20 as the unpaid principal balance as of March 31, 2022;
- ii. \$2.11 as the unpaid interest on the principal balance at 1.0% per annum through March 31, 2022; and
- iii. interest on said principal balance from May 1, 2022 at 1.0% per annum until paid.

A “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” (“Notice”) dated January 5, 2022, was sent to Petitioner at her last known address. 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. Petitioner has not entered into a written repayment agreement.

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 or 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*. Attached as exhibits are a copy of the Subordinate Note and the Declaration of Gary Sautter, who attests to Petitioner’s debt. Petitioner does not contest the existence of the debt or that the remaining debt is past due. Indeed, the express language of the Subordinate Note, signed and agreed to by Petitioner, 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 six thousand two sixty eight and 99/100 Dollars (U.S. \$ 6,268.99), to the order of the Lender.” The Subordinate Note further states that payment will be made to HUD’s Office of Housing FHA-Comptroller in Washington, D.C. Accordingly, Petitioner is liable to repay the Secretary the full amount of the remaining debt. Further, the remaining debt is past due at least because the Primary Note was paid in full on June 30, 2020, and is no longer insured by the Secretary.

Petitioner claims the 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.” Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985).

In support of her claim, Petitioner submits two paystubs and a Financial Disclosure Statement detailing her monthly expenses and signed under penalty of law (see 18 U.S.C. § 1001). She claims two (2) dependents and provides documentation (e.g., lease, insurance policy, utility, and phone bills, etc.) in support of monthly expenses including: \$1,801.00 (rent and renter’s insurance), \$386.22 (car payment), \$110.00 (tuition for children), \$95.18 (electric),

\$84.38 (cell phone), and \$74.99 (Internet). Petitioner also claims unsupported expenses including: \$600.00 (food), \$60.00 (utilities), \$60.00 (gas), \$49.53 (medical benefits not deducted by employer), \$60.00 (clothing), and \$7.00 (pest control). With the exception of the cost of pest control, for which explanation is not provided, these expenses are found to be generally credible. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012) (finding that credit may be given for certain essential household expenses, despite insufficient documentation when the financial information is found to be generally credible). In addition, Petitioner lists \$36,380 in student loans. While this figure was not supported, Petitioner does provide support for student loans of up to \$29,837. As each student loans lists a repayment term of 164 months, this Court estimates Petitioner's monthly payment to be \$182 per month.¹

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. Accordingly, Petitioner's evidence shows that her monthly disposable pay is approximately \$3,010, but her monthly expenses amount to about \$3,508. Thus, any garnishment at this time would leave Petitioner with a deficit.² 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 Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.³

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. However, it is:

ORDERED that the Secretary is not authorized to seek administrative wage garnishment of Petitioner's disposable income in any amount. It is

¹ The sum of the individual payments for each loan listed in Petitioner's documentation reveals a total payment of \$22.96 per month. However, this amount is not given weight, as such a payment would not appear to result in the loans being repaid by the end of the repayment term.

² Petitioner also reports receiving monthly child support of \$550. However, this addition to her income still leaves her with a monthly deficit.

³ 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.

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 be **MAINTAINED** until garnishment of Petitioner's disposable pay is appropriate.

SO ORDERED,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.11.15 10:48:36 -05'00'

Alexander Fernández-Pons
Administrative Law Judge

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.).