

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

In the Matter of:

BRIAN FOWLER,

Petitioner.


22-AM-0202-AG-130
(Claim No. 721018792)

July 9, 2024

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 May 4, 2022, Bryan Fowler (“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 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.

FINDINGS OF FACT

On March 3, 2015, Petitioner took out an FHA-insured mortgage (“Primary Note”) in the amount of \$16,133.56. To prevent foreclosure, HUD advanced funds to Petitioner’s FHA-insured lender to bring the mortgage current. In exchange for such funds, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary.

The terms of the Subordinate Note required payment on or before July 1, 2043, or when the first of the following events occurred:

- i. the 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; or
- 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; or
- iv. the property is not occupied by the purchaser as his or her principal residence.

On August 10, 2020, the FHA-insured lender indicated that Petitioner’s primary mortgage was paid in full, and the FHA mortgage insurance was subsequently terminated. As

such, Petitioner's debt to HUD became due and payable pursuant to the terms of the loan. However, Petitioner did not repay the Subordinate Note as required. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$8,171.28 as the unpaid principal balance as of September 30, 2022;
- ii. \$20.43 as the unpaid interest on the principal balance at 1% per annum through September 30, 2022; and
- iii. interest on said principal balance from October 1, 2022, at 1% per annum until paid.

A *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* ("Notice") dated March 15, 2022, was sent to Petitioner at his 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. To date, Petitioner has not entered into a written repayment agreement.

Subsequently, a *Wage Garnishment Order* dated April 19, 2022, was issued to Petitioner's employer. Based on the Order, Petitioner's pay has been garnished twice, totaling \$219.59. This amount is reflected in the unpaid balance stated above. Pursuant to 31 C.F.R. § 285.11(f)(4), this Tribunal stayed wage garnishments upon receiving Petitioner's Hearing Request until the issuance of this written decision. The Tribunal is now asked to review the Secretary's proposal to withhold 15% of Petitioner's disposable income to satisfy the alleged debt.

DISCUSSION

The Secretary bears the initial burden to prove the existence and amount of the alleged 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). Petitioner may also present evidence showing that the terms of the proposed repayment schedule are unlawful or would cause undue financial hardship, or that collection of the debt may not be pursued due to operation of law. *Id.*

As evidence of the existence and amount of the debt, the Secretary filed the *Secretary's Statement*, together with a copy of the Subordinate Note signed by Petitioner and the sworn Declaration of Brian Dillon. Accordingly, the Tribunal finds that the Secretary has met her initial burden of proof.

Petitioner does not deny the existence or amount of the debt. Rather, Petitioner claims the Secretary's proposed garnishment would cause him financial hardship. Pursuant to 31 C.F.R. § 285.11(i)(2)(i)(A), the Secretary is authorized to collect up to 15% of Petitioner's disposable pay. However, in appropriate cases where Petitioner makes a showing of financial hardship, this Tribunal has the discretion to modify the Secretary's proposed repayment schedule. 31 C.F.R. § 285.11(f)(8)(ii). A showing of financial hardship requires Petitioner to "submit 'particularized evidence,' including proofs of payment, showing that he 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 his position, Petitioner provided a copy of his monthly pay statement for the pay period ending on September 15, 2022, an updated Financial Statement signed under penalty of perjury, and Wells Fargo Bank statements for August and September 2022. Petitioner’s evidence indicates the following essential monthly expenses: car repairs and gas, \$200.00; cell phone, \$357.00; electric bill, \$300.00; internet, \$111.04; trash collection, \$18.00; water bill, \$74.26; daughter’s school fee, \$279.50; credit card bills, \$85.00; life insurance, \$98.00; car insurance, \$297.07; cable, \$20; and food, \$700. Accordingly, the Tribunal finds Petitioner’s total monthly essential expenses to be \$2,539.87. Petitioner also lists his two teenage children as dependents living in the household and indicates that his spouse is unemployed.

As for Petitioner’s monthly disposable income, the updated Financial Statement and Pay Stub filed with the Secretary’s Statement show that Petitioner received a pay increase since filing his Hearing Request. During the pay period reflected on the updated Pay Stub, Petitioner’s gross pay of \$2,964.00, less deductions for taxes, FICA, and Medicare, leaves a monthly disposable pay of \$2,570.95. The Wells Fargo Bank Statements submitted by Petitioner reflect additional monthly income (SSA 310 Treasury payments, \$1,043.00; SC State Public Aid payments, \$469.00). Accordingly, Petitioner’s monthly household income totals \$4,082.95.

A review of Petitioner’s essential monthly expenses reveals that the Secretary’s proposed repayment schedule will not cause Petitioner financial hardship. Specifically, the proposed 15% garnishment (\$385.64 monthly) from Petitioner’s disposable pay, together with the SSA 310 Treasury and SC State Public Aid payments, leaves Petitioner with a monthly disposable income of \$3,697.31. This exceeds Petitioner’s monthly essential expenses by \$1,157.55. Therefore, this Tribunal finds that Petitioner’s evidence fails to support his financial hardship claim, and the Secretary may garnish Petitioner’s disposable pay as proposed.

Should Petitioner wish to negotiate repayment terms with the Department, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.¹ Petitioner is entitled to seek reassessment of the repayment schedule in the future in the event that he experiences materially changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Tribunal finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

¹ The Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting HUD counsel assigned to this case.

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner's disposable income monthly or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for the administrative wage garnishment is **VACATED**.

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: 2024.07.09 12:09:03 -04'00'

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.*).