

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

In the Matter of:

Tiffany Weber,

Petitioner

22-VH-0024-AG-020

721012647

April 19, 2023

DECISION AND ORDER

On November 5, 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 November 10, 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")* at 2. On December 2, 2021, the Secretary in response filed her *Statement* along with documentation in support of her position. Other than the documentary evidence Petitioner submitted on November 5, 2021 along with her *Hearing Request*, no further evidence was offered. 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.

In or about March 2016, the HUD-insured primary mortgage on Petitioner’s home was in default, and Petitioner was threatened with foreclosure. *Secretary’s Statement (Sec’y. Stat.)*, ¶ 2; Ex. B, Note. To prevent the lender from foreclosing, HUD advanced funds to Petitioner’s lender to bring the primary mortgage current. *Sec’y. Stat.*, ¶ 3, Ex. A, *Declaration of Brian Gagliardi (Gagliardi Decl.)*, ¶ 3. In exchange for foreclosure relief, on March 31, 2016, Petitioner executed a Subordinate Note (“Note”) in the amount of \$31,883.84 in favor of the Secretary.

Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Sec’y. Stat.*, ¶ 5, Ex. A, *Gagliardi Decl.*, ¶ 4. On or about September 13, 2017, the FHA insurance on Petitioner’s primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec’y. Stat.*, ¶ 6, Ex. A, *Gagliardi Decl.*, ¶ 4. Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the “Office of Housing FHA- Comptroller, Director of Mortgage insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as Lender may designate in writing by notice to Borrower.” *Sec’y. Stat.*, ¶ 8, Ex. A, *Gagliardi Decl.*, ¶ 5.

Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner’s debt to HUD is delinquent. *Id.* Petitioner is justly indebted to the Secretary in the following amounts as of October 31, 2021:

- a. \$31,883.84 as the unpaid principal balance;
- b. \$1,195.20 as the unpaid interest on the principal balance at 1 % per annum;
- c. \$6,994.39 as the unpaid penalties and administrative costs; and
- d. interest on said principal balance from November 1, 2021 at 1 % per annum until paid.

Sec’y. Stat., ¶ 9, Ex. A, *Gagliardi Decl.*, ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated October 14, 2021, was mailed to Petitioner’s last known address. *Sec’y. Stat.*, ¶ 10, Ex. A, *Gagliardi Decl.*, ¶ 6. 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.*, ¶ 11, Ex. A, *Gagliardi Decl.*, ¶ 7.

HUD reviewed Petitioner’s biweekly pay statement for the period ending October 15, 2021. The pay statement reveals that Petitioner’s biweekly gross salary is \$2,500.00. Less allowable deductions of \$578.48, Petitioner’s biweekly net disposable pay equals \$1,921.52. Administrative Wage Garnishment of 15% of Petitioner’s disposable pay equals \$288.22 biweekly. Therefore, the Secretary’s proposed repayment schedule is \$288.22 biweekly, or 15% of Petitioner’s disposable pay. *Sec’y. Stat.*, ¶ 13, Ex. A, *Gagliardi Decl.*, ¶ 8. 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 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 \$2500.00. Her monthly deductions required by law are federal income tax, \$227.59; FICA, \$151.13; state tax, \$102.00; Medicare, \$35.34; and medical insurance, \$57.62, that together total \$573.68. After deductions, Petitioner's monthly disposable income is \$1926.32.

Petitioner outlined the following essential household expenses month-to-month: rent, \$1840.00; food, \$400; cell, \$188.62; gas/oil, \$20.13; water/sewer, \$95.86 (avg); electricity, \$261.81; and, Internet, \$100.00. The record sufficiently supports with documentation the expenses alleged by Petitioner as monthly household expenses. In this case, consistent with case law precedent, Petitioner provided sufficient financial information, so the Court has determined that the expenses identified by Petitioner qualify as essential household expenses that are sufficiently credible based on the financial information provided. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05 at 4 (January 20, 2012) (citing Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). As a result, Petitioner's total monthly expenses average \$2106.42.

After deducting Petitioner's total monthly expenses of \$2106.42 from her monthly disposable income of \$1926.32, Petitioner is left with a negative balance of – (\$180.10). At the Secretary's proposed garnishment rate of 15%, the Petitioner's garnishment amount would be

\$288.94. Deducting the Secretary's proposed garnishment amount from Petitioner's negative monthly balance of – (\$180.10) would yield a higher negative balance of approximately – (\$469.04). Upon further review, the Court has decided that authorization of the Secretary's proposed amount would create a financial hardship for Petitioner because the zero balance at month's end would obviously not sustain Petitioner on a monthly basis should miscellaneous or emergency expenses unexpectedly arise.

While the Secretary has successfully established that the subject debt is legally enforceable in the amount claimed by the Secretary, 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. Herein, a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient enough to justify a suspension of collection action at this time.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment on November 10, 2021 shall remain in place, indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment based on Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment should, in the future, Petitioner's income increase, or her essential household expenses be reduced.

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.