

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

In the Matter of:

Mary Lyas,

Petitioner

23-VH-0019-AG-009

5486025 LL 9244

February 9, 2024

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on December 12, 2022, by Petitioner Mary Lyas (“Petitioner”) concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”).

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 pursuant to 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 December 14, 2022, 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 April 13, 2023, the Secretary filed her *Statement* along with documentation in support of his position. Petitioner, on June 22, 2023, filed his *Statement* along with documentary evidence in support of his claim of financial hardship. 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") because of a debt that resulted 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.

According to the record, on June 5, 1991, Petitioner executed and delivered a Retail Installment Contract ("Note") in the amount of \$23,781.54 to Ranch Park Homes DBA Amer Southern, which was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). The Note was contemporaneously assigned by Ranch Park Homes DBA Amer Southern to Logan-Laws Financial Corporation ("Logan-Laws"). In support of her position, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration and HUD's Claims Examination Justification for Action.

"Logan-Laws was defaulted as an issuer of Mortgage-Backed Securities ("MBS") due to its failure to comply with the Government National Mortgage Association's ("Ginnie Mae") MBS program requirements." Upon default by Logan-Laws, all of its rights, title, and interest in Petitioner's loan were assigned to Ginnie Mae by virtue of the Guarantee Agreement entered into between Logan-Laws and Ginnie Mae. As Ginnie Mae (a division of HUD) is the rightful holder of the Note, the Secretary is entitled to pursue repayment from Petitioner. Petitioner is currently in default on the Note. The Secretary has made efforts to collect from Petitioner but has been unsuccessful.

Petitioner is justly indebted to the Secretary in the following amounts as of February 3, 2023:

- (a) \$14,348.66 as the unpaid principal balance;
- (b) \$2,703.17 as the unpaid interest on the principal balance; and
- (c) 2% interest on said principal balance until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") dated October 6, 2022, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. Petitioner failed to enter into a written repayment agreement in response to the Notice.

"In Petitioner's hearing request, she attached copies of her previous payment history; however, the documentation she provided does not show that her debt to Ginnie Mae was paid in full." Ginnie Mae's proposed repayment schedule is 15% of Petitioner's disposable pay.

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.

DISCUSSION

Petitioner does not dispute the existence of the subject debt or the fact that the debt is enforceable. Instead, Petitioner challenges the amount of the debt owed and argues that she has

been making payments towards the subject debt by means of administrative wage garnishment and tax offsets since 2009. Petitioner contends that “the Department of Treasury garnished her wages from 2009 until 2022,” and subsequently offset “two tax refunds due her” that were also applied to the subject debt. The debt collections thus far, according to Petitioner, total \$43,282.59 and should have already been applied to this debt or paid the debt in full. As a result, Petitioner claims that the amount of the subject debt is incorrect and requested a review of the same.

After reviewing the record, the Court has determined that Petitioner is in error and that the amount claimed by the Secretary is not erroneous. The income statements presented by Petitioner were insufficient as proof that the garnishment payments claimed by Petitioner were applied towards the subject debt from 2009 through 2022. Instead, what the income statements show is that while certain garnishment payments began in 2019 and not from 2009 through 2022, even those income statements failed to show that such garnishments were actually applied to the Ginnie Mae loan associated with the debt in this case.


For Petitioner to successfully substantiate her claim, she must present evidence that the collections by wage garnishment were actually applied towards the Ginnie Mae debt in this case. Such evidence is sorely lacking in the record. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Petitioner has failed to meet her burden of proof so, accordingly, her claim that the amount alleged by the Secretary is erroneous fails for lack of proof.

ORDER

Based on the foregoing, Petitioner shall pay the subject debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter on December 14, 2022 to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek 15% of Petitioner’s disposable pay in satisfaction of the debt due and now enforceable.

SO ORDERED.

Vanessa L. Hall
Administrative 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.*).