

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

In the Matter of:

Denise Davis,

Petitioner.

Docket No. 23-VH-0134-AG-073

Claim No. 5539644 LL 9244

December 6, 2024

DECISION AND ORDER

This proceeding is before the Tribunal upon a request for hearing (“*Hearing Request*”) filed on July 21, 2023, by Denise Davis (“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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable regulations.

JURISDICTION

The administrative judges of this Tribunal 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 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. *Id.* § 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 July 28, 2023, this Tribunal stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On September 14, 2023, the Secretary filed her *Statement (Sec’y. Stat.)* along with documentation in support of her position. On February 16, 2024, in response to the Tribunal’s *Order to Show Cause*, the Petitioner filed documentary evidence in support of her position. This case is now ripe for review.

FINDINGS OF FACT

This debt collection action is brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

According to the Secretary, Petitioner executed and delivered to Accent Mobile Homes a *Retail Installment Contract* (“Note”) dated May 4, 1993, in the principal amount of \$14,056.80. The Note was insured against nonpayment by the Secretary, pursuant to the National Housing Act, 12 U.S.C. § 1721(g). Contemporaneously, the Note was assigned to Logan-Laws Financial Corporation (“Logan-Laws”).

Subsequently, the Government National Mortgage Association (“Ginnie Mae”), a division of HUD, defaulted Logan-Laws as an issuer of Mortgage-Backed Securities (“MBS”) due to its failure to comply with the MBS program requirements. Upon default, all of Logan-Laws’ rights, title, and interest in Petitioner’s loan were assigned to Ginnie Mae, and, therefore, to HUD.

The Secretary claims that Petitioner is currently in default of the Note and Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$10,081.20 as the unpaid principal balance as of August 30, 2023; and
- (b) 2% interest on the principal balance until paid.¹

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 5, 2023, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii) and the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. However, to date, Petitioner has not entered into any such agreement.

Accordingly, the Secretary proposes a wage garnishment at 15% of Petitioner’s disposable pay. Based on the foregoing, the Secretary requests a finding that the Petitioner’s debt, claimed herein by HUD, is past due and legally enforceable, and seeks authorization of the proposed repayment schedule.

DISCUSSION

Petitioner argues that she does not owe the full amount of the debt because \$13,308.84 of her income has already been credited towards the debt through wage garnishment and offsets of her income tax returns. As support, Petitioner offers into evidence a calculation of her income that was applied to the debt including copies of corresponding documentation to prove that she does not owe the amount claimed by the Secretary.

After reviewing the record, the Tribunal has determined that Petitioner has paid a combined total of \$13,850.94 collected by means of administrative offset and administrative wage garnishment. While the documentation presented by Petitioner shows that the amount collected

¹ It should be noted that the amounts regarding Petitioner’s indebtedness to the Secretary for unpaid interest, administrative fees, and assessed penalty fees were not included because the record reflected a zero balance for those amounts.

thus far is almost equal to the initial principal amount owed, Petitioner has since accrued interest and collection fees because the debt has remained outstanding for so many years. As a result, the current debt amount includes the remaining balance of the debt owed, plus accrued interest and collection fees. Unless Petitioner can prove that the subject debt now owed has been paid in full, she remains responsible for the debt. Case law precedent has established that “assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable.” Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Petitioner therefore remains responsible for the subject debt due to lack of proof.

Petitioner next claims, as unethical and unfair, the \$7,000.00 she incurred for debt collection fees associated with the subject debt. As a practice, the Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury (“Treasury”) for collection. 31 U.S.C. § 3711(g). By law, HUD is further required to charge interest and fees on past due debts. HUD Debt Collection Handbook, 1900.25 REV-5 § 2-5 (A). When HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). But Petitioner, as the debtor, is also required to pay for debt collection fees charged by the U.S. Department of Treasury until the outstanding debt is paid in full. Payments made by the debtor are first applied to fees, then to interest, and then finally to the principal. 31 C.F.R. § 901.9(f). In this case, the evidence presented by the Petitioner has not established that the subject debt amount is in error, so the debt remains intact. As a result, the Tribunal finds that the collection fees associated with the subject debt must be included as required and paid by Petitioner.

Finally, Petitioner requests that the Tribunal considers her financial hardship claim because she is currently struggling to catch up and keep up with her monthly obligations. Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of showing by a preponderance of the evidence that the proposed wage garnishment would create a financial hardship. To make a showing of financial hardship, Petitioner must “submit ‘particularized evidence,’ including proofs of payment, showing that [s]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). Here, in support of her claim, Petitioner offers into evidence a copy of a Debt Resolution Financial Statement, corresponding proofs of payment, and a paystub.

Petitioner’s essential monthly expenses are: mortgage, \$667; car payment, \$444.83; gasoline/auto repairs, \$160; electricity, \$232.81; food, \$450; water, \$107.88; medical expenses (out-of-pocket), \$600; clothing, \$100; trash, \$100; IRS tax repayment, \$25; internet, \$89; and car insurance, \$111.99. Petitioner also listed personal loans and credit card debt. Based on the evidence, Petitioner’s monthly household expenses total \$3,088.51.

Petitioner’s pay statement indicates a gross pay for the biweekly pay period totaling \$1,985.94, which in turn yields a monthly gross income of \$3,971.88. After allowable deductions for social security, federal and state taxes, and other deductions permitted by law, Petitioner’s biweekly disposable income of \$1,429.90 yields a monthly disposable income of \$2,859.80. If the Secretary imposes garnishment after deductions in this case, 15% of Petitioner’s monthly disposable income will result in a garnishment payment of \$428.97 monthly. Petitioner’s essential

household expenses of \$3,088.51 already exceed her disposable income of \$2,859.80 by \$228.71. Petitioner will have a negative balance of -\$657.68 each month if the proposed garnishment rate is allowed.


Petitioner has met her burden of proof that the Secretary's proposed garnishment rate would cause severe financial hardship. This Tribunal has the authority to order garnishment at a lesser rate based upon the record before it. See 31 C.F.R. § 285.11(k)(3). While the Secretary has successfully established that the subject debt is legally enforceable and past due against Petitioner in the amount so claimed in this case, the Tribunal finds under 31 C.F.R. § 285.11(k)(3) that a garnishment amount at any percentage of Petitioner's disposable income would constitute a financial hardship sufficient to justify suspension of collection action at this time.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury on July 28, 2023, for administrative wage garnishment 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

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.*).