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

In the Matter of: RHONDA PATTERSON, Petitioner.	24-AF-0025-AG-018 (Claim No. 721020428) January 7, 2025

DECISION AND ORDER

On November 13, 2023, Rhonda Patterson ("Petitioner") filed a *Hearing Request* ("*Request*") seeking a 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 the 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 August 7, 2022, Petitioner executed and delivered a Kansas Partial Claim Note ("the Note") in favor of the Secretary in the principal amount of $8,886.85. The funds secured by the 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 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 Note. The Note required payment on or before November 1, 2042, 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, 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.

On or about March 15, 2022, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. The total amount due now consists of:

i. $6,508.01 as the unpaid principal balance as of October 31, 2023;
ii. $0.00 as the unpaid interest on the principal balance at 1.0% per annum through October 31, 2023;
iii. $0.00 as the unpaid penalties and administrative costs on the balance through October 31, 2023; and
iv. interest on said principal balance from November 1, 2023, at 1.0% per annum until paid. [1]

A "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated October 4, 2023, was sent by the U.S. Department of Treasury on behalf of HUD. 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.

HUD's attempt to obtain Petitioner's current income information was unsuccessful. Therefore, HUD proposes a wage garnishment repayment schedule of $181.00 per month to liquidate the debt in approximately three years, or alternatively an amount equal to 15% of Petitioner's disposable income.

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, 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* together with a copy of the Kansas Partial Claim Note signed by Petitioner and the Declaration of Brian Dillon, Director, Asset Recovery Division, wherein Mr. Dillon states the full amount of the debt owed by Petitioner. The express language of the 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 Eight Thousand Eight Hundred Eighty Six and 85/100ths Dollars (US $8,886.85), to the order of the Lender." (emphasis removed). The Note further states that payment will be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, Washington, D.C. Accordingly, the copy of the

[1] If found liable for the debt, Petitioner may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6).

Note submitted by HUD under oath is sufficient to establish the existence and the amount of the debt owed by Petitioner.

In her *Request*, Petitioner contests the existence of the debt stating that she believes the loan was paid off on March 5, 2022, after refinancing her home. She goes on to state that the mortgage company could not have made a first lien mortgage on the property unless any inferior liens were paid off at closing. However, Petitioner has not provided any evidence to refute the amount of the debt as claimed by the Secretary or to show that the Note was indeed paid in March 2022. It is axiomatic that assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable. See *In re* Hongmei Zhang, HUDOHA No. 23-AF-0163-AG-093 (Dec. 3, 2024). Accordingly, the Tribunal finds Petitioner has not met her burden to prove that the amount of the debt is incorrect.

Therefore, the Secretary may garnish the lesser of 15% of Petitioner's disposable pay or $181.00 per month.[2] Petitioner is entitled to seek reassessment of the repayment schedule in the future in the event she experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

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

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner's disposable pay (or $181.00 per month, discussed above), or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable pay. It is

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 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: 2025.01.07 13:43:25 -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.).

[2] Should Petitioner wish to negotiate repayment terms with the HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD. Petitioner may discuss this matter with Counsel for the Secretary or the Director of HUD's Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859.